

IN THE SENATE OF THE UNITED STATES.

MAY 20, 1896.—Ordered to be printed.

Mr. DAVIS, from the Committee on Foreign Relations, submitted the following

REPORT:

[To accompany Senate resolution of December 18, 1895, calling for copies of all papers and correspondence, diplomatic or otherwise, on file in the State Department in connection with the arrest and imprisonment at Arequipa of Victor H. MacCord.]

The Committee on Foreign Relations, to whom was referred the message of the President, dated January 10, 1896, relating to the arrest and imprisonment at Arequipa, Peru, of Victor H. MacCord, respectfully report:

This case received full and careful consideration by the committee at the third session of the Fifty-third Congress, and the report then made, and appended hereto, marked Exhibit B, is hereby affirmed and made a part of this report.

The message of the President of the United States, transmitting, in response to Senate resolution of December 18, 1895, addressed to the Secretary of State, a report of that officer, with the accompanying correspondence, is also hereto appended, marked Exhibit A, and made a part of this report.

The accompanying resolution is respectfully submitted and its passage recommended:

Be it resolved, That the President is hereby requested to continue the investigation and efforts heretofore made by the United States in the matter of the claim of Victor Hugo MacCord, a citizen of the United States, against the Government of Peru, to the end that such an adjustment of said claim may be made as may be warranted by the facts in the case and by the law applicable thereto.

EXHIBIT A.

Senate Document No. 64, Fifty-fourth Congress, first session.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES.

TRANSMITTING,

In response to Senate resolution of December 18, 1895, addressed to the Secretary of State, a report of that officer, with the accompanying correspondence in relation to arrest and imprisonment of Victor Hugo McCord at Arequipa, Peru.

JANUARY 10, 1896.—Laid on the table and ordered to be printed.

To the Senate of the United States:

I transmit herewith, in response to the Senate resolution of December 18, 1895, addressed to the Secretary of State, a report of that officer, with the accompanying correspondence, in relation to the arrest and imprisonment of Victor Hugo McCord at Arequipa, Peru, requested by said resolution.

GROVER CLEVELAND.

EXECUTIVE MANSION,
Washington, January 10, 1896.

The PRESIDENT:

The undersigned, Secretary of State, having received a resolution passed in the Senate of the United States on the 18th of December, 1895, in the following words:

Resolved, That the Secretary of State be, and is hereby, requested to furnish for the use of the Senate copies of all papers, correspondence, diplomatic or otherwise, on file in the State Department in connection with the arrest and imprisonment at Arequipa, Peru, of Victor H. McCord, a citizen of Linesville, Crawford County, Pa., in June, 1895 (1885), he being at the time consular agent of the United States in Peru, if any have been received by the State Department since the consideration of those transmitted to the Senate by the President December 6, 1894, and the consideration of the same by the Senate Committee on Foreign Relations, and its report to the Senate February 14, 1895, upon the subject, accompanied by the following resolution:

"Resolved, That the President is hereby requested to continue the investigation and efforts heretofore made by the United States in the matter of Victor Hugo McCord, a citizen of the United States, against the Government of Peru, to the end

that such an adjustment of said claim may be made as may be warranted by the facts in the case and by the law applicable thereto,"

has the honor to lay before the President a report covering the subject of said resolution, with the correspondence therein requested, to the end that, if in the President's judgment it be not incompatible with the public interest, the same be transmitted to the Senate in response to the foregoing resolution.

Respectfully submitted.

RICHARD OLNEY.

DEPARTMENT OF STATE,
Washington, D. C., January 10, 1896.

WASHINGTON CITY, *January 15, 1895.*

SIR: In Fifty-third Congress, third session, Senate Ex. Doc. No. 4, on page 17, an error of the printer occurs in the postscript, giving the date of the same September 11, 1894, instead of 1888, and this note is addressed to ask an official note making the correction.

Also to request a copy of the letter of Secretary Bayard to Hon. J. D. Cameron under date of March 22, 1886, touching the MacCord matter.

I have the honor to be, etc.,

S. NEWTON PETTIS,
516 Thirteenth Street NW.

Hon. W. Q. GRESHAM,
Secretary of State.

DEPARTMENT OF STATE,
Washington, February 1, 1895.

SIR: I have to acknowledge the receipt of your letter of the 15th ultimo, and, in compliance with its request, to inclose herewith copy of the letter addressed by Secretary of State Thomas F. Bayard to Hon. J. D. Cameron on March 22, 1886, touching the case of Mr. V. H. McCord.

Referring to Senate Ex. Doc. No. 4, Fifty-third Congress, third session, I have to inform you that the postscript signed by Charles W. Buck, which appears on page 17 thereof, is in the original dated September 11, 1888, and not September 11, 1894, as erroneously printed.

I am, sir, your obedient servant,

EDWIN F. UHL,
Acting Secretary.

S. NEWTON PETTIS, Esq.,
516 Thirteenth Street NW., Washington, D. C.

DEPARTMENT OF STATE,
Washington, March 22, 1886.

DEAR SIR: Upon examination of the files of this Department in relation to the alleged outrage upon Mr. V. H. McCord, a citizen of Pennsylvania, which, according to the newspaper slip left by you in my hands to-day, occurred in Peru in June last, I find that the matter was brought to the attention of Mr. Buck, our minister at Lima, and that he made proper examination of the case.

Mr. Buck reports to this Department that the circumstances referred to transpired previous to his arrival in Peru, but that no protest or complaint from Mr. McCord was found upon the records of the legation, nor has any been since received. He further reports that Peru was at the time referred to by Mr. McCord in a condition

of armed revolution, in which the varying fortunes of war inflicted losses upon all property owners in that region. The prefect, Manuel San Roman, who is charged by Mr. McCord with the responsibility for his alleged injuries, was a colonel in the Peruvian army and a revolutionary chieftain. The liability of the Government of Peru for such injuries as Mr. McCord complains of does not appear from anything except the newspaper communication of July last which you handed me to-day, and which, it seems, had previously been sent to the United States minister. Under the circumstances, no sufficient ground appears as yet for further action by this Department.

I have the honor to be, sir, your obedient servant,

T. F. BAYARD.

Hon. J. D. CAMERON,
United States Senate.

WASHINGTON, *March 30, 1895.*

SIR: I have the honor to inclose to you a letter just received from Victor H. MacCord, dated February 14, 1895, written upon the morning he received the printed correspondence sent to the Senate by you in answer to the Senate's call last July, and to which your attention is respectfully invited. Such letter, by a singular coincidence, bears the same date, written at Arequipa, Peru, that the report of the Committee on Foreign Relations was made to the Senate and ordered to be printed, viz, February 14, 1895, submitting the following resolution:

Be it resolved, That the President is hereby requested to continue the investigation and efforts heretofore made by the United States in the matter of the claim of Victor H. MacCord, a citizen of the United States, against the Government of Peru, to the end that such an adjustment of said claim may be made as may be warranted by the facts in the case by the law applicable thereto.

You will observe that Mr. MacCord states that the note of Mr. Ribrego to Mr. Hicks of February 15, 1893, as printed in the correspondence, "is entirely new to me, and also false from beginning to end, with the exception, perhaps, of a few clauses purposely arranged to confuse." Its powder had all been burnt in 1888 in the diplomatic notes that passed between Mr. Buck and Mr. Alzamora, the ministers representing the two Governments, running from August to November of that year, consisting of: Mr. Buck to Mr. Alzamora, August 6, 1888; Mr. Alzamora to Mr. Buck, August 28, 1888; Mr. Buck to Mr. Alzamora, September 3, 1888; Mr. Alzamora to Mr. Buck, November 6, 1888; Mr. Buck to Mr. Alzamora, November 14, 1888. To the last, Mr. Buck to Mr. Alzamora, of November 14, 1888, Mr. Alzamora never made answer, but three months later, as Mr. Buck was leaving Peru, soon to be succeeded by Mr. Hicks, the then minister of foreign affairs, the successor of Mr. Alzamora called the matter up before Mr. Buck and requested him to say to his Government on his arrival home that Peru was anxious to settle the MacCord matter.

Before Mr. Buck reached the United States Mr. Blaine had been installed in office, succeeding Mr. Bayard, but no opportunity was given him to call the attention of the Department to the case.

No action was had by the State Department for three years, and when, November 6, 1891, Mr. Blaine, in answer to a note from Mr. Hicks, dated October 5, 1891, asking for a reason to be given MacCord for not considering his case, declined "to volunteer explanations with reference to its action," condescended to permit Mr. Hicks to ask the foreign office on December 2, 1891, to reply to Mr. Buck's of November 14, 1888, after three years' refusal by Peru to make answer and the inattention of the State Department for the same length of time.

On February 18, 1893, Mr. Hicks, in his note to Mr. Foster, inclosing Mr. Ribrego's, dated February 15, 1893 (which, Mr. MacCord says, is

false from beginning to end), says to Mr. Foster "is in reply to his of December 2, 1891, and as it was not immediately answered he wrote twice more afterwards, and personally on not less than six different occasions brought the matter to the attention of the foreign office."

There was no occasion for the letter of Mr. Hicks to the foreign office December 2, 1891, inasmuch as the whole subject had been discussed by the ministers of the two Governments in 1888, and as Mr. Alzamora declined a reply to Mr. Buck's unanswerable note of November 14, 1888, and the request that in three months followed by the minister of the foreign office calling the matter up before Mr. Buck and requesting him to express to his Government on his return home Peru's desire to settle the MacCord claim, plainly indicated that nothing remained to be done but to ascertain the amount of indemnity the Governments could agree upon. No other conclusion can be drawn from the existence of such a state of facts, viz:

August 6, 1888, Mr. Buck informed Minister Alzamora that he was directed by his Government to present the claim of Mr. MacCord, inclosing MacCord's protest of June 16, 1885, making known the unlawful acts complained of and stating "that Mr. MacCord had assigned satisfactory reasons for not having before presented his claim for the official cognizance of his Government," and "requesting an explanation."

Three weeks after, August 28, 1888, Mr. Alzamora replied:

First, "That his Government never had any knowledge of the facts in the protest contained, and that the long time transpired since the protest is dated, June 16, 1885, it would not be in his Government's power to satisfy itself of the truthfulness of such statements."

Second, "That no matter what the realities of the facts are Mr. MacCord has no other course but to prosecute judicially the authors of the acts to which he refers."

Six days after, September 3, 1888, Mr. Buck submitted an exhaustive reply, covering the entire diplomatic ground involved, and among other things stated that—

The outrages perpetrated against Mr. MacCord in June, 1885, were of general notoriety at the time and of such a character as excited general indignation among foreign residents in Arequipa to an extent that elicited their united action in remonstrance and in a demand for a legal trial, which, in violation of treaty and legal guarantees, was not accorded.

That there is no statute of limitations to international claims nor presumption of payment or settlement; that I apprehend judgment upon the question of delay in the matter is solely within the discretion of the United States.

A month later Mr. Alzamora, under date of November 6, 1888, in reply to Mr. Buck, abandoned the position assumed in his note of August 28, 1888, and "considered the fine imposed by Prefect San Roman emanating from legitimate authority as it frankly so declares, and for that reason it has resolved to study the case of MacCord," and then adroitly sought by evasion to avoid accountability for the arrest, imprisonment, inhuman and brutal treatment of MacCord, a United States consul, by asserting that "the fine was not imposed upon MacCord individually, but on the railroad," as if blood money levied against a corporation in defiance of all law by a rebel in arms against a constitutional government of the realm could be with impunity, and then in 1888 foolishly insinuating, without an iota of evidence in its support, that MacCord had disobeyed Roman's orders, while the correspondence is replete with evidence that he obeyed every order given by Roman, and directed their execution from his cell in prison, addressed to the proper employee.

One week later, November 14, 1888, Mr. Buck replied to Mr. Alzamora, expressing gratification at Mr. Alzamora's receding from the two propositions taken by him: First, "The delay in presenting the claim;" second, "That the Government of Peru was not responsible for the acts of General Roman," and then by way of refutation of Mr. Alzamora's statement in his note of August 28, 1888, that "his Government never had knowledge of the facts alleged by MacCord as set forth in his protest, and that in consequence of the great lapse of time since 1885, it would not be in its power to ascertain their truth," Mr. Buck informed him that he had just then, November 14, 1888, "received advices that the said prefect, San Roman, on December 8, 1886, solicited approval of his proceedings referred to against Mr. MacCord, which the Government granted without even notice to or a hearing from him under date of December 15, 1886, of which Mr. MacCord was informed by official note dated December 22, 1886," and adding, "I conceive there remains now no question as to the responsibility of the Peruvian Government for the indicated acts, according as their true nature may be demonstrated," and then entering upon an elaborate and eminently clear discussion of the facts in the case, from which I extract the following:

These facts alleged by MacCord, and proved before the English vice-consul over his signature, and those of the said some thirty-nine consular officers and other persons in Arequipa, I do not understand your excellency to controvert.

The same signatures attest that "the running away of the engine was due to the perfidy of the engineer and the carelessness of the officer and troops placed in charge of it by the said Colonel San Roman, there being absolutely no blame attachable to any employee of the railroad except the engineer who ran away."

The statement of said protest and numerous signed certificate, quite contrary then to the views expressed by your excellency, seem to show that Mr. MacCord was not responsible for the flight of the engineer with the locomotive to the Inglesias forces, but that circumstance resulted from the negligence or fault of Colonel San Roman's own forces that had been placed in charge of said locomotive.

But even if the question of the fine be put to one side for the present, which, however, I can not admit can be done, over and above that remains, apparently uncontroverted, the wrong and violence committed against Mr. MacCord's person in disregard of all right, and, as I understand, of Peruvian laws themselves, and in plain violation of treaty guarantees; hence, whether the fine was imposed on him personally or upon him as the representative of the railroad, and whether or not charged on the railroad's books and afterwards discounted, Mr. MacCord has independently his claim against the Government of Peru for proper reparation as to the wrongs committed against himself.

I have just received from the Department of State at Washington a copy of Mr. MacCord's memorial to his own Government, in which he states his claim for indemnity against that of Peru, for treatment complained of, at \$200,000.

I reiterate, etc.,

CHAS. W. BUCK.

The only answer Mr. Buck ever received to such note of November 14, 1888, was a verbal request made by the Peruvian minister as he was leaving for home in the spring of 1889, asking him to say to his Government, on his return, that Peru was anxious to settle the MacCord case, although Mr. MacCord was importuning the State Department, during the years 1889, 1890, and 1891, without any notice being taken of his efforts looking to the prosecution of his claim, except a request of the Department to ask the foreign office for a reply to Mr. Buck's note of November 14, 1888, which resulted in the note from Mr. Ribrego, dated February 15, 1893, that consisted simply of reiteration of Mr. Alzamora's of nearly five years before, and which Mr. Buck in his reply had compelled Mr. Alzamora to recede from every position he had taken, and Mr. Ribrego (in 1893) assumed, while the notice then taken by the American representative at Lima upon the receipt of Mr. Ribrego's note of February 15, 1893, is little if anything less than

scandalous to American diplomacy. No wonder that in 1892, while a citizen of Pennsylvania was sojourning in Peru, and the United States was thus represented, he actually passed as an Englishman, for no other reason than that he wished to be awarded the civilities extended to Englishmen, but denied to Americans, citizens of the United States.

I have thus, Mr. Secretary, at some length briefed the status of this case in all fairness, that you may be saved the labor of wading through correspondence in considering the resolution of the Foreign Relations Committee reported to the Senate on the eve of the adjournment of Congress, which I trust you will consider, although for reasons you will understand was not reached on the Calendar.

I have the honor, etc.,

S. NEWTON PETTIS,
Solicitor for Victor H. MacCord.

Hon. W. Q. GRESHAM,
Secretary of State.

AREQUIPA, February 14, 1895.

DEAR SIR: Yours of January 1, inclosing printed document, letters, etc., bearing on my case, is just this morning received.

Minister Ribrego's note is entirely new to me, and is also false from beginning to end, with the exception perhaps of a few clauses purposely arranged to confuse. It is true that cars were left at Mollendo, as it was materially impossible to bring them all away without sending down engines. This fact was made known to San Roman, who replied that no engines should go down, and that in view of the impossibility of bringing the cars away he would order them to be burned. He did not, however, insist upon that when he knew the engines had all been brought to this city. That there was any plan or agreement between Mr. Thorndike and the Iglesias party in Lima is simply impossible, because we here were directly under the orders of the Caceres authorities, who could and did remove all the engines from the lower division of the road. Why not interrogate Mr. Thorndike on the subject? Also, if thought necessary, let Gen. J. M. Echenique, who was then minister of war of the Iglesias Government, be questioned on the subject. He ought to know if there was any understanding with Mr. Thorndike. I am satisfied there could not have been any such understanding, but let it be proven. True, Mr. Garcia y Garcia did send a telegram to Braun saying he had been promised transportation, but that is not proof, and even if it was it could not implicate me, who had, in obedience to orders, retired all the engines from the Mollendo line.

Let McKensie be questioned as to whether anyone had intimated to him such an action. He is not friendly to me, but I am not afraid to have him testify on the subject.

I deny that the prefect had any legal right to impose such a fine. Let the Peruvian law be examined on that point. I indignantly deny and brand as false the statement of Sr. Ribrego that I ever conspired against any Government in Peru, and I challenge him to present any proof in support of his allegation.

I never pretended to have paid the fine out of my own private funds. Why should I? Besides, I am claiming not for the fine, but for unlawful, barbarous, and inhuman treatment to which I was subjected, and without the semblance of a trial to which by law I was entitled.

In regard to Mr. Cantriaras's statement, I do not see that it has any bearing on my case.

Mr. Morales only copies an order which I do not deny having received and which was complied with, as far as possible, and the prefect was made aware of the impossibility of bringing away with one engine all the cars from Mollendo, as before stated.

In regard to Mr. San Roman's affidavit or certificate on page 9, I will only say that I was not, at the time, the legal representative of the railway. I was merely an employee in charge of the traffic department and Mr. Thorndike, the lessee, had his legal representative in this city. A legal representative, however, was not what was wanted. San Roman wanted some one whom he could with impunity compel to pay a ransom, which, as he himself afterwards confessed to me and to others, "saved the situation."

I notice in one of the letters the minister at Lima is requested to ascertain what is thought of the merits of the claim by disinterested parties residing in Peru. This should be done, and possibly may have been; I do not know, but suspect it has

not. Arequipa would seem to be a good point for practicing such an investigation. The case is well known here in all its particulars, as also are both Sr. San Roman and
Yours, truly,

W. H. MacCORD.

Hon. S. NEWTON PETTIS, *Meadville, Pa.*

WASHINGTON, *April 11, 1895.*

SIR: After the report in the MacCord case by the Senate Committee on Foreign Relations, Senator Davis of that committee suggested that I should see that the Peruvian minister here have a copy of the report made two months ago.

Of course I took no action in the matter, inasmuch as you were so much burthened by diplomatic complications that I did not wish to annoy you.

By calling upon Mr. Landis, I should be glad if you would, through him, advise me if there would be any impropriety in my mailing a copy to Dr. Yrigoyen.

Yours, very truly,

S. NEWTON PETTIS.

Hon. W. Q. GRESHAM,
Secretary of State.

DEPARTMENT OF STATE,
Washington, April 20, 1895.

SIR: I have to acknowledge the receipt of your letter of the 11th instant, in which you request me to advise you if there would be any impropriety in your mailing to Dr. Yrigoyen, the Peruvian minister in this city, a copy of the report recently made to the Senate by its Committee on Foreign Relations, upon the case of Mr. Victor H. McCord.

In reply, I have to say that this is a matter upon which the Department can not undertake to advise you.

I am, sir, your obedient servant,

W. Q. GRESHAM.

S. NEWTON PETTIS, Esq.,
Washington, D. C.

DEPARTMENT OF STATE,
Washington, April 22, 1895.

SIR: I have to acknowledge the receipt of your communication of the 30th ultimo, inclosing a letter addressed to you by Mr. Victor H. McCord, dated Arequipa, February 14, 1895.

After reviewing at some length the published correspondence in the McCord case, you express the hope that I will consider the resolution in regard to that case recently reported to the Senate by its Committee on Foreign Relations.

In reply I have to say that the resolution has been considered by this Department, but I do not think it can properly be taken as a basis for further diplomatic action in the case until it has been finally adopted by Congress.

I am, sir, your obedient servant,

ALVEY A. ADEE,
Acting Secretary.

S. NEWTON PETTIS, Esq.

EXHIBIT B.

Senate Report No. 927, Fifty-third Congress, third session.

Mr. DAVIS, from the Committee on Foreign Relations, submitted the following

REPORT:

Upon Senate resolution of July 24, 1894, calling for copies of all papers and correspondence, diplomatic or otherwise, on file in the State Department in connection with the arrest and imprisonment at Arequipa of Victor H. MacCord.

The Committee on Foreign Relations, to whom was referred "all papers and correspondence, diplomatic or otherwise," on file in the State Department in connection with the arrest and imprisonment at Arequipa, Peru, of Victor H. MacCord, report as follows:

A careful and patient examination of the copies of papers and correspondence transmitted to the Senate in response to its resolution of July 24, 1894, shows that on February 10, 1883, Victor Hugo MacCord, a citizen of the United States, was made consular agent of the United States in Peru, South America, and on February 20, 1883, was recognized as such at Arequipa, the second city in Peru. (See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 3.)

In June, 1885, a revolution was in progress in Peru, under the lead of General Caceres, against the then constitutional government of President Iglesias.

The prefect at Arequipa, Manuel San Roman, was a colonel in the Peruvian army, and was the revolutionary chief at Arequipa, under General Caceres.

On June 11, 1885, Mr. MacCord, who was the acting superintendent of the Arequipa, Puno and Cuzco Railroads, received the following order:

JUNE 11, 1885.

MR. SUPERINTENDENT OF THE RAILROADS.

You will please place at the disposition of Sergeant-Major Valdez an engine which will to-day leave the station of this city.

God guard you.

MAN'L SAN ROMAN.

These are to certify the above-written signature of Man'l San Roman, prefect of the department of Arequipa, under the government of General Caceres, to be of his true and proper handwriting.

British vice-consulate, Arequipa, the 22d day of October, 1888.

[SEAL.]

ALEX. HARTLEY,
British Vice-Consul.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 21, 22.)

And also on the 12th of the same month he received the following order:

PREFECTURE OF THE DEPARTMENT, *June 12, 1885.*

Mr. MACCORD,

Superintendent of the Railroads.

You will direct by telegraph all orders of the case, in order that the rail line between Cachendo and La Joya remain completely unused.

You will have for that fulfillment until to-morrow very early, in order that this order may be terminantly complied with. As to that, you being in the power of the authority which has to comply with his duty in these circumstances, the mere fact of the fugitive engine passing from La Joya in the direction of this city will place me in the case of shooting you without the least delay, since you alone are responsible for what may happen.

God guard you.

MAN'L SAN ROMAN.

[Indorsement—Translation.]

Mr. A. TAMAYO, *Present.*

Be pleased to dictate the measures most efficient in order to comply with the order above indicated of the señor prefect.

V. H. MACCORD.

Cuartel of San Francisco (date as above).

CERTIFICATE.

These are to certify the above-written signatures of Man'l San Roman, prefect of the department of Arequipa, under the then government of General Caceres, to be of his true and proper handwriting, the present document having been handed me to keep under date the 12th day of the month of June, 1885.

British vice-consulate, Arequipa, Peru, this 22d day of the month of October, 1888.

ALEX. HARTLEY,
British Vice-Consul.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 22).

On the same day, viz, June 12, 1885, simultaneous with the service of the foregoing order of Roman, Mr. MacCord was thrown into prison, whence the order of Roman was promptly complied with by MacCord, from the prison Cuartel, of San Francisco, as appears from the reference first above given. (See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 22.)

On the same day, June 12, 1885, and shortly after the receipt of the foregoing order of Roman, an officer came to the cell in which Mr. MacCord was confined and advised him to arrange his affairs, as there was an order to shoot him within an hour; and less than half an hour afterwards he was marched out to the parade ground and was stood up before a file of soldiers armed with rifles, and was asked if he wished to say anything, as he was to be shot. He replied that he had committed no crime and had nothing to say. Thereupon the officers, three or four in number, consulted together for a moment, one saying "it was not good to kill a man," when he was led back to his cell a prisoner. (See Protest, Ex. Doc. No. 4, Fifty-third Congress, third session, p. 4.)

On June 13, 1885, Mr. MacCord was notified (verbally) by Subprefect Don Francisco Llasa that by order of the prefect he must pay a fine of 10,000 soles, and at once, or severe measures would be taken against his person to compel payment, and no delay would be allowed. Mr. MacCord replied that "it was entirely unjustifiable to impose a fine imposing culpability without even a semblance of an investigation," and was denied a trial, all the time by him demanded. (See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 4.)

On the same day, viz, June 13, 1885, the entire foreign colony resident in the city of Arequipa, headed by the consular corps, went in

a body to the prefect's house and obtained from him a promise to have Mr. MacCord confined in some other place which offered more security to his life, and that he would be given a prompt trial in accordance with the law of the country. The first request was complied with; the second disregarded. (See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 4, 5.)

On June 14, 1885, notice was given by verbal message from the prefect that if the 10,000 soles were not paid before three o'clock in the afternoon the "extreme measures" threatened would be applied and the fine increased to 15,000 soles, and, if delayed longer, to 20,000 soles. Mr. MacCord again demanded a trial and protested against the illegality of the fine and nonfulfillment of the promise of prompt trial made the night before to the consular corps and to the several members of the foreign colony, to which nothing but threatening replies were received, when in desperation Mr. MacCord suggested that the amount of the fine be deducted from the balance due the railway by the Government for work done, which was refused. (See Ex. Doc. No 4, Fifty-third Congress, third session, p. 5.)

On June 15, 1885, word was brought Mr. MacCord that by order of the prefect the prisoner MacCord would not be allowed either food or water, and that every article of furniture would be removed from his cell, which order was forthwith carried out. The cell being a damp one, with a brick floor, he was compelled to stand, as everything, even to a rough stone which might have served him as a seat, was taken away. Without anything to eat or drink since the previous day, it was impossible for him to stand such brutality. Thanks to some of the commercial houses of the city of Arequipa, the 10,000 soles were raised, and at 3 o'clock in the afternoon the prisoner was allowed to go at liberty.

On June 16, 1885, Mr. MacCord made a formal protest against the brutal and inhuman treatment inflicted upon him without shadow of cause given or authority to justify it, which is found in full upon pages 4 and 5, Ex. Doc. No. 4, Fifty-third Congress, third session, and which is as follows:

By this public instrument of protest, be it known and made manifest to all whom it may concern that on the 16th day of the month of June, in the year of our Lord 1885, personally came and appeared before me, Alexander Hartley, esq., acting British vice-consul at Arequipa, in the Republic of Peru, Victor Hugo MacCord, a citizen of the United States of North America, acting superintendent of the Arequipa, Peru, and Cuzco railroads, who deposes as follows:

In consequence of the political events transpiring in this department of Arequipa since the 8th instant, the prefect, Col. Don Manuel San Roman (appointed by General Caceres), had caused all the engines to be retired from the Mollendo division and concentrated in this city. On the 11th instant the said prefect ordered an engine and train of cars to be put at the orders and under the charge of Sergt. Maj. (Sargento-Mayor) Enrique Valdez, for the purpose of conveying troops somewhere on the Mollendo division, which order was immediately complied with.

During the absence of this train from Arequipa, namely, on Friday, the 12th of June, by the perfidy of the engineer and the carelessness of the officer in charge, the engine ran away and joined the opposing forces at Mollendo. Notwithstanding the fact of the train having been put in charge of the commander of the troops, and there being absolutely no blame attachable to any employee of the railway except the engineer who ran away, the above said MacCord was immediately imprisoned in the San Francisco Barracks, where he received the following official note from the prefect, reading textually:

"Prefectura del Departamento a 12 de Junio de 1885. Senor MacCord, superintendente de los ferro-carriles: Diste va por telegrafo todas las ordenes del casa para que la linea ferrea entre Cachendo y la Joya quede imitilizada completamende. Tiene va para ello plaza hasta mañana muy temprano, para que esta orden terminante se cumpla, pues estando como esta va en poder de la autoridad que tiene que cumplir su deber en estas circunstancias, el mero hecho de pasar de la Joya en

direccion a esta ciudad la maquina fugitiva, me pondra en el caso de fusilarlo sin la mas pequena dilacion, pues va es el unico responsable de la acouticido-Dios que, a va—Manuel San Roman.”

At the foot of the said official note the following instructions were given, reading textually:

“Señor A. Tamayo, Pte. Sierase Vd. dictar las medidas mas eficacies para complir la orden arriba indicada del V. A. MacCord, Curatel de San Francisco. Feeha et Supra.”

Some time after the receipt of the note an officer came to the cell and advised the prisoner to arrange his affairs, as there was an order to shoot him within an hour, and less than half an hour afterwards he was marched out to the parade grounds and stood up before a file of soldiers armed with rifles, and asked if he wished to say anything, as he was to be shot. He replied that he had committed no crime and had nothing to say; thereupon the officers, three or four in number, retired a short distance and appeared to consult among themselves a moment, when one said, “It is not good to kill a man,” and they then led the prisoner back to his cell. In the meantime some friends, who, having been refused admittance to the prisoner, seeing that some of the officers were under the influence of liquor, and fearing for the life of the prisoner in such a place, had gone to the prefect and asked to have the prisoner changed to some other place of confinement, and about midnight he was transferred to the “cuartel de los Yericcios.” On the following day, June 13, the prisoner was verbally notified by the subprefect, Don Francisco Llosa, that by order of the prefect he must pay a fine of 10,000 soles for the escape of the engine, and that it must be paid at once or severe measures would be taken against his person to compel the payment; that no delay would be allowed, and, to the end that his orders might be strictly and rigidly carried out, the prisoner would be remanded to the “cuartel de San Francisco.”

Reply (also verbal) was returned, saying that it was entirely unjustifiable to impose a fine implying culpability, without even a semblance of an investigation, and that a trial was asked for in order to establish the facts and show who was responsible for the escape of the engine. It was not allowed, and about 7 o'clock in the evening the threat of returning the prisoner to San Francisco was carried out. In view of this proceeding, after what had transpired there the night before, the entire foreign colony resident in this city, headed by the consular corps, went in a body to the prefect's house and obtained from him a promise to have the prisoner confined in some other place which offered more security for his life, and that he would be given a prompt trial in accordance with the laws of the country. The first was speedily complied with, and the prisoner transferred to the “cuartel de la Maestranza” the same evening. The following day, June 14, notice was given by verbal message from the prefect that if the 10,000 soles was not paid before 3 o'clock in the afternoon the “extreme measures” threatened would be applied and the fine increased to 15,000, and if delayed longer to 20,000 soles.

Reply was made reiterating the demand for trial and protesting against the illegality of the fine and nonfulfillment of the promise of trial, made the night previous to the consular corps and to the several members of the foreign colony, which had not been kept, nor has it been up to the time of entering this protest. All was ignored and only threatening replies were received. Convinced of the arbitrary proceedings which were evidently to be employed to compel the payment, it was suggested that the amount of the fine be deducted from the balance due the railway by the Government for work done; this was also refused. On the morning of the 15th word was brought that by order of the prefect the prisoner, MacCord, should not be allowed either food or water, and that every article of furniture be removed from his cell, which order was forthwith carried out. The cell was a damp one, with a brick floor, and the prisoner was compelled to stand, as everything, even to a rough stone, which might have served as a seat, was taken away. Without anything to eat or drink since the previous day, it was impossible to stand this, and every exertion was now made to procure the money, which had to be borrowed, as on account of the almost complete paralyzation of traffic for nearly a year past, owing to political disturbances, the railway was unable to earn sufficient to even pay its workmen. Thanks to some of the commercial houses of this city the money was raised, and at 3 o'clock in the afternoon the prisoner was allowed to go at liberty.

It appearing by the foregoing deposition that the laws of the country have been defiantly infringed by an authority who, not being a judge, imposes fines and executes punishments arbitrarily and in violation of the laws, and by keeping the prisoner over the time allowed by law, without submitting him to the proper tribunal for trial, and subjecting him to barbarous and inhuman treatment whilst so detained, I, Victor H. MacCord, do make this my formal protest against the arbitrary and abusive proceedings of the aforesaid prefect of Arequipa, Col. Don Manuel San Roman, and do declare that the 10,000 soles in silver coin were paid under pressure of violence and reserving the right to make claim to a higher authority and to the

tribunals of justice of the country and to appeal to diplomatic ways, if necessary, in defense of my own personal rights and in protection of the interests confided to my care. Let it be put on record that the first use made of my liberty is to enter this protest at the British vice-consulate, this 16th day of June, 1885.

V. H. MACCORD.

Thus protected and declared in due form of law at Arequipa aforesaid, the day, month, and year first before written.

ALEX. HARTLEY, *Acting British Vice-Consul.*

[Translation of the notes embodied in the foregoing protest.]

Give by telegraph the necessary orders to completely destroy the railway track between Cachendo and La Joya. You have time to comply with the terminant order until to-morrow early, because, being, as you are, in the power of the authority who has to perform its duty in these circumstances, the mere fact of the fugitive engine attempting to pass La Joya in direction to this city, will put in the case of shooting you without the least delay, as you are the only person responsible for what has happened. God guard you.

MANUEL SAN ROMAN.

Mr. A. TAMAYO,
Resident Engineer.

Please dictate the necessary measures to carry out the above-indicated order of the prefect.

V. H. MACCORD, *San Francisco Barracks.*

Feeha ut supra.

Orders given by Roman while MacCord was in prison.

[First.]

M. PEREZ. VITOR.

Answer if you have broken the large water pipes. MacCord's life depends on it, and a grave responsibility rests on your shoulders; or do you not comply strictly with my orders.

SAN ROMAN.

[Second.]

M. COMMISSARIAT VITOR.

If you do not comply with the orders to take up the rails on the line ahead and empty the water tanks, and if the engine that has passed there returns, I will shoot MacCord, as he is already under sentence of death. Advise me all night of everything that occurs.

SAN ROMAN.

Such orders were authenticated and certified to by Mr. Alex. Hartley, British vice-consul.

On July 24, 1885, the following protest was, by Mr. MacCord, forwarded to Mr. Buck at Lima, as appears from the following communication:

Mr. MacCord to Mr. Buck.

AREQUIPA, July 24, 1885.

SIR: I take the liberty to inclose herewith certified copy of a protest made by me before the British vice-consul in this city on the 16th day of last month, and beg you to advise me what further steps should be taken, if any, in order to make a claim for the outrages committed against my person, as set forth in the said protest.

I have, etc.,

V. H. MACCORD.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 3, 4.)

The above letter, it would seem, was induced by the receipt of a letter by Mr. MacCord from the resident United States minister, Mr. Gibbs, and written from La Paz under date of July 17, 1885, advising MacCord "to make a claim against Peru for at least \$100,000 damages and to

give Mr. Buck a detailed account of the whole matter." (See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 3.)

The allegations contained in the foregoing protest of MacCord were supported by the following testimonial:

[Inclosure 1 to inclosure 1 in No. 442.—Translation.]

Those who subscribe, natives and strangers, resident in this city during the month of June, 1885, having been well acquainted with the terms of the protest which preceded, made by Mr. MacCord, superintendent of the railroads of Mollendo to Puño and Cuzco, before Mr. Alex. Hartley, vice-consul of Her Britannic Majesty in Arequipa, being animated by a lively sentiment of the strictest justice, consider it due him to declare, as in effect they do declare, that those things which it evidences, having been, in this locality, of public notoriety, absolutely conform with the truth of what occurred, all and each of the facts which are found set forth in the said protest.

Which, with the respective signatures they desire to authenticate, for the ends which Mr. MacCord, the author of the aforesaid documents, may consider proper.

Arequipa.

C. WAGNER, [L. S.]
Consul of the German Empire.
EMLIO PETERSEN, [L. S.]
Consul of the Netherlands.
GMO. MORRISON, [L. S.]
Vice-Consul, Argentina.
JOSÉ V. RIVERA, [L. S.]
Vice-Consul of Portugal.
JOSÉ EGUREN, [L. S.]
Vice-Consul of Spain.
GUILLERMO RICKETTS, [L. S.]
G. HARMSSEN, [L. S.]
Consul of Austria-Hungary.
P. GUINASSI, [L. S.]
Consular Agent of Italy.
BERNARDO WEIS, [L. S.]
Consul of Bolivia.
ALEX. HARTLEY, [L. S.]
British Vice-Consul.
E. PONCIGNON, [L. S.]
Vice-Consular Agent of France.
FRA. K. GIBBONS.
WILLIAM CANNON.
JNO. BOURCHIER.
MNR. BUSTAMANTE Y BARREDA.

WALTER NICKOLSON.
FEODORO HARMSSEN.
THOS. PEAKE.
JAMES G. BEAUMONT.
ADOLFO WESTPHALEN.
A. CAMBIAGGO.
CARLOS ACKERMANN.
P. GOMEZ CORNESS.
TEDEO W. SCHERWOOD.
BDO. NYCANDER.
PATRICK GIBSON.
H. MEIER.
PAULSON HNS.
JAMES GOLDING.
ALEXANDER CLARK.
ROBERTO KELLER.
H. P. STANFIELD.
JUAN GUILLARD.
JORGE BUCLEU.
GUILLERMO CHEBANAIX.
M. LINARES CUNNING.
MIGUEL V. VARGAS.
P. M. PARODI.
H. SAENZ.

On October 30, 1885, Minister Buck wrote to Minister Bayard informing him that he had received through the mail a page of the Leader and Herald, a newspaper published at Cleveland, Ohio, of September 14, 1885, containing a letter giving an account of outrages committed on a United States consular agent at Arequipa, Peru, such letter being dated July 28, 1885. Mr. Buck also stated that the country was then involved in a civil war, and the larger portion of its territory was held by the Caceresta revolutionists, and that the prefect, Manuel San Roman, was the revolutionary chief in Arequipa. (See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 2.)

On March 22, 1886, Secretary Bayard, in reply to Senator Cameron's inquiry in person, stated that Minister Buck reported that:

The circumstances referred to transpired previous to his arrival in Peru, but that no protest or complaint from Mr. MacCord was found upon the records of the legation, and that the liability of the Peruvian Government for such injuries as MacCord complains of does not appear from anything except the newspaper communication of July last, which you (Cameron) handed me to-day. Under the circumstances, no sufficient ground appears as yet for further action of this Department. (See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 10; also letter to committee received since date of Ex. Doc.)

December 15, 1886, the Government of Peru approved and ratified the action of June, 1885, by the prefect and rebel chieftain Roman, President Iglesias having in the meantime been deposed by the revolutionists under General Caceres, who was installed as President of Peru at Lima. (See Ex. Doc. No. 18, Fifty-third Congress, third session, p. 4, paragraph 16.)

On May 24, 1888, Mr. Buck wrote a dispatch to Secretary Bayard, inclosing letter of Minister Gibbs to MacCord, dated July 17, 1885; letter of MacCord to Mr. Buck of July 24, 1885, with protest of MacCord dated June 16, 1885, such protest containing statements of facts concerning the transaction of June, 1885. Mr. Buck, in his dispatch to Secretary Bayard, under date of October 30, 1885 (Ex. Doc. No. 4, Fifty-third Congress, third session, p. 2), stated he presumed "from inquiries he had made, that the narration was in the main correct," adding that then, May 24, 1888—

Mr. MacCord is at present consular agent of the United States at Mollendo, latterly commissioned November 12, 1886. (See Department Register, p. 31; See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 2, 3, 4, and 5.)

June 23, 1888, Mr. Thorndike, the manager of the railroad company, wrote a letter of complaint to Mr. Buck against renewed persecutions against Mr. MacCord (See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 8), as follows:

LIMA, June 23d, 1888.

SIR: I have the honor to submit to you the accompanying note of cablegrams received from Arequipa in the course of the last few days. No. 1 announces that Messrs. MacCord, Beaumont, and Harmsen have had guards put on them for the purpose of exacting the payment of income tax on the profits which the Southern railroads are supposed to have yielded during the first half of the present year—that is, from the 1st of January until the 30th of this month. Nos. 2, 3, and 4 announce that action had been suspended against Messrs. Beaumont and Harmsen, but that MacCord was still being subjected to abuse and violence.

You are aware that my father was the victim of the most iniquitous spoliation on the 6th of May last; that the fiscal administrators appropriated all materials, such as coal, oil, etc., which were his exclusive property, and that they have recovered the value of freights which were due previous to the said 6th of May, which constitutes a further spoliation. Now, they make use of the public force to exact taxes upon imaginary profits said to have been made in the first six months of this year, when it is a notorious fact that at the beginning of the fifth month the railroads were violently seized by the Government. This last act puts the finishing touch to the systematic outrages which the Peruvian Government, counting upon impunity, has shamelessly committed against the interests of my father.

In defense of those interests, which I at present represent, I beg that you will take note of this new act of violence, and will take steps to secure Mr. MacCord against further molestation, who, as late superintendent of the railroads, only did his duty in obeying the orders given him by his employer, and who has nothing further to do with the railroads now they are in possession of the Government.

As it has, however, been alleged that Mr. MacCord has had guards put on him for matters which do not concern the railroads, I feel called upon to represent to you that he has no business of any other kind in Arequipa, and that he has remained in that city solely for the purpose of acting there as my father's agent.

In view of the foregoing statement it will be evident to you that Mr. MacCord is being persecuted with matters connected with the Southern railways and because it is supposed that he is my father's legal representative in Arequipa.

I solicit your attention to the matter which is the subject of the present communication, and

I have the honor to be, etc.,

E. THORNDIKE.

Hon. CHAS. W. BUCK, *U. S. Minister.*

LEGATION OF THE UNITED STATES, *Lima, Peru.*

I attest the foregoing to be a true copy from the files of this legation. This June 29th, 1888.

RICHARD R. NEILL,
Secty. U. S. Legation, Lima, Peru.

Mr. Rives to Mr. Buck.

No. 208.]

DEPARTMENT OF STATE,
Washington, D. C., June 23, 1888.

SIR: In your No. 376, of the 24th ultimo, you inclose copy of a protest made on June 16, 1885, before the acting British vice-consul at Arequipa, by Mr. V. H. MacCord, an American citizen, and now consular agent of the United States at Mollendo, detailing the outrages inflicted on him in June, 1885, by the prefect of Arequipa, Col. Don Manuel San Roman, who was appointed by General Cáceres.

Mr. MacCord was at that time acting superintendent of the Arequipa, Puno and Cuzco railroads, and had caused all the engines to be withdrawn from the Mollendo division and concentrated at Arequipa. On June 11 the prefect of Arequipa made requisition on Mr. MacCord for an engine and train of cars to convey troops to a point on the Mollendo division, placing the train under the command of Sergeant-Major Valdez. During its absence, while in charge of the said officer, the engineer detached his engine and ran off with it to the opposing forces at Mollendo.

Although Mr. MacCord was in no way responsible for this occurrence, it having been the result of the treachery of the engineer and the carelessness of the guard, he was thrown into prison and threatened by the prefect that if use was made of the runaway engine he would be shot. A short while afterwards he was taken out of prison, placed before a file of soldiers, and asked whether he wished to say anything, as he was about to be shot. After a conference among the officers he was, however, taken back to prison, and ordered to pay a fine of 10,000 soles. Declining to do this he was deprived of food and drink and left standing in a damp cell, all the furniture, and even a stone on which he had been sitting, being removed. Finally, some of the commercial houses in the city having raised the funds necessary to pay the fine, he was released, and immediately made protest, as above stated, on June 16, 1885.

The case has, you state, never been formally laid before your legation until the date of your dispatch, because it was feared that injury might be done to the railroad interests of Mr. MacCord's employer, Mr. Thorndike.

Mr. MacCord's explanation of his delay in presenting his claim is satisfactory to the Department, and you are instructed to present the case to the Peruvian Government, requesting an explanation.

I am, etc.,

G. L. RIVES, *Acting Secretary.*

(See Ex. Doc. No. 18, Fifty-third Congress, third session, pp. 1, 2.)

On June 27, 1888, Mr. Buck wrote to Mr. Bayard, touching the restraint again of Mr. MacCord at Arequipa June 19, 1888, and giving copies of cablegrams passing between the ministers of both Governments at Lima. (See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 5, 6, 7, and 8.)

On August 2, 1888, Mr. MacCord's solicitor addressed the Secretary of State as follows:

Mr. Pettis to Mr. Bayard.

WASHINGTON, August 2, 1888.

SIR: In your letter to Senator J. D. Cameron, under date of March 22, 1886, relative "to the alleged outrage upon V. H. MacCord, a citizen of Pennsylvania," which occurred in Peru, South America, in June, 1885, you say:

"Mr. Buck reports to this Department that the circumstances referred to transpired previous to his arrival in Peru, but that no protest or complaint from Mr. MacCord was found upon the records of the legation, nor has any been since received."

I now have the honor, as the representative of Mr. MacCord, to inclose you a copy of Mr. MacCord's protest made immediately after his liberation, and at once forwarded to the American minister at Lima, Peru.

I am also informed by letter from Mr. MacCord that the action of the prefect, Manuel San Roman, was, in December, 1886, submitted to the Government of Peru, at Lima, and, without notice to either Mr. MacCord or the railroad company, investigated and approved, an official notice of which was given Mr. MacCord, dated the 22d day of December, 1886.

May I ask if this additional statement of facts does not entitle the case of Mr. MacCord to fresh consideration by our Government?

I have, etc.,

S. NEWTON PETTIS, *Ebbitt House.*

(See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 10, and for protest, pp. 10, 11, and 12.)

On August 6, 1888, Minister Buck addressed the Department of State as follows:

Mr. Buck to Mr. Bayard.

409.]

LEGATION OF THE UNITED STATES,
Lima, Peru, August 6, 1888. (Received September 3.)

SIR: In pursuance of your instruction, No. 208, of June 23d last, I have addressed a note to the foreign office in matter of the outrage perpetrated against Mr. V. H. MacCord in June, 1885, inclosing a copy of his "protest" made at the time before the acting English vice-consul at Arequipa and requesting explanation. As you have transcript of the said "protest," I only herewith inclose copy of note to the foreign office.

I am, etc.,

CHAS. W. BUCK.

P. S.—August 11, 1888. From the inclosed cutting and translation, it will be observed this same San Roman, who perpetrated the outrage on Mr. MacCord in June, 1885, has been just reappointed prefect of Arequipa, the Government expressing satisfaction with his service.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 12.)

[Copy of note referred to above.]

Mr. Buck to Minister of Foreign Relations.

No. 110.]

LEGATION OF THE UNITED STATES,
Lima, August 6, 1888.

SIR: Under a recent instruction from the Department of State, I am directed to present to the Government of your excellency and request explanation in the case of Mr. Victor H. MacCord, now United States consular agent for Mollendo.

I may in advance say that Mr. MacCord has assigned reasons for not having before presented his claim for the official cognizance of his Government, which the Department of State regards as a satisfactory explanation of the delay.

Premising this, I inclose to your excellency a copy of Mr. MacCord's protest made at the time before the acting British vice-consul at Arequipa, which will place your excellency in knowledge of the circumstances as narrated by him. With which presentation and request for explanation, I renew expressions, etc.

CHAS. W. BUCK.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 12.)

On August 28, 1888, Mr. Alzamora acknowledged the receipt of Mr. Buck's communication of August 6, 1888, containing "instructions from the Department of State to submit the case of Victor H. MacCord, actual consular agent of the United States, and to ask for an explanation of the circumstances, and that Mr. MacCord had given reasons satisfactory to his Government for not presenting his claim sooner," as follows:

MINISTER OF FOREIGN RELATIONS OF THE REPUBLIC OF PERU,
Lima, Peru, August 28, 1888.

MR. MINISTER: Your excellency's esteemed communication of the 6th instant was duly received at this office, in which your excellency indicates having received instructions from the Department of State to submit to my Government the case of Mr. Victor H. MacCord, actual consular agent of the United States at Mollendo, and to ask for an explanation of the circumstances; and that Mr. MacCord has given reasons for not presenting sooner his claim to the Government at Washington, which delay is satisfactorily explained in said Government's mind.

Your excellency incloses a copy of the protest made by Mr. MacCord before Her Britannic Majesty's vice-consul at Arequipa, for my information as to the facts, according to the exposition contained in it; and your excellency terminates, requesting information as to the truth of what occurred.

My Government has never had knowledge of the facts referred to in said protest, nor would it be in its power to satisfy itself of the truthfulness contained in said protest, after the long time transpired, since the protest is dated June 16, 1885.

It appears noticeable that Mr. MacCord should have made no question during all this time after he had not only obtained the full use of his rights, but has exercised his authority as consular agent of the great Republic. It being a most special circumstance that Mr. MacCord has been accredited as consular agent at Mollendo during

the administration of the same Mr. San Roman against whom the protest appears to be made, and as your excellency knows, he is prefect of the department of Arequipa, to which Mollendo pertains. It is still more remarkable that Mr. MacCord, having cultivated with the prefect of Arequipa the most friendly relations during two years, without ever having mentioned the protest in question, should make use of it now that Mr. San Roman, in obedience to the orders of the Government, has removed Mr. MacCord from the superintendence of the southern railways, which he exercised, as it appears from said protest.

But no matter what the realities or facts to which Mr. MacCord refers, they can in no case serve as grounds for diplomatic action, and still less so after the long time transpired. These were in fact the acts of a chief in arms against the Government then recognized as legitimate by all nations, especially by the great Republic; the responsibility, if such should exist, does not therefore rest upon the Government of the nation, but personally on the authors of them.

That responsibility, in any case, could not attach except after proof of the acts in question, before the national tribunals, and as the result of their judgment.

Mr. MacCord has therefore no other course but to prosecute judicially the authors of the acts to which he refers in his protest, and which he is bound to prove.

I have no doubt that your excellency will be persuaded by this statement that it is not possible for my Government to furnish your excellency with the information required, and that the principles I have laid down are just, as indicating the only way open to the claimant in order to obtain the reparation which he may believe himself entitled to.

I have pleasure in reiterating, etc.,

YSAAC ALZAMORA.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 17, 18.)

In August, 1888, Mr. Pettis, as the solicitor of Mr. MacCord, called upon Secretary Bayard touching his letter to the Secretary of the 2d of that month, whereupon Solicitor Wharton was directed to take up the subject, examine it, and give the necessary direction for a thorough investigation, who outlined the form of a memorial which was formulated by Mr. Pettis and inclosed to Solicitor Wharton for criticism, and which called forth the following letter:

HOTEL KAATERSKILL, *August 29, 1888.*

DEAR JUDGE PETTIS:

The inclosed, with your note, was forwarded to me at this place. As you were referred to me for your information by the Secretary, it gives me much pleasure to give any suggestions as may not be inconsistent with the semijudicial position I fill. As to the body of the memorial, I do not feel competent at present to speak. As to one deficiency in form, I beg leave to advise you. It will be necessary to state the nature of the petitioner's citizenship, whether by birth or naturalization; to specify how long he has been in Peru and on what business; to show, if such be the case, that he has always kept up his American citizenship, that he has represented American interests in Peru, that his expectation has always been to return to the United States, that his residence in Peru was only temporary for business purposes, and that he has never acquired a domicile in Peru. The memorial, as thus amended, must be verified by affidavit, and when thus perfected, addressed to the Secretary of State.

I send this to Washington to be copied and forwarded to you thence.

FRANCIS C. WHARTON.

Under date of October 2, 1888, Mr. MacCord's solicitor addressed the following letter to the Secretary of State:

MEADVILLE, PA., *October 2, 1888.*

SIR: Since the receipt of Mr. Secretary Adees reply to mine of the 25th of last July, addressed to me under date of August 14, 1888, I concluded to make a formal claim in favor of Mr. V. H. MacCord against the Peruvian Government, in South America, which I have the honor to inclose to you herewith.

I have the honor to be, your obedient servant,

S. NEWTON PETTIS.

Hon. THOMAS BAYARD,
Secretary of State, U. S. A.

(Ex. Doc. No. 18, Fifty-third Congress, third session, p.—.)

[Memorial inclosed.]

Hon. THOMAS F. BAYARD, *Secretary of State.*

The memorial of Victor H. MacCord, at present sojourning at Arequipa, Peru, South America, begs leave to present:

First. That he is a citizen of the United States, and was born in Mercer County, Pa.

Second. That he has been in Peru, South America, most of the time since 1870, and much of the time in the employ of the Mollendo, Arequipa and Puno Railroad Company, and at one time acted as United States consul in Peru.

Third. That he visited his home in Pennsylvania in 1883, from there going back to Peru for the purpose of closing up his affairs in South America, which, he informed his relations in Pennsylvania, he thought he could do within two years, with the intention of returning to his home in Pennsylvania, never having abandoned his United States citizenship.

Fourth. That while in Peru he represented United States interests, that it has always been his intention to return to the United States, and that his residence in Peru has only been temporary and for business purposes, and that he has never acquired a domicile in Peru or out of the United States.

Fifth. That he was in June, 1885, an employee of the Mollendo, Arequipa and Puno Railroad Company, in the Republic of Peru, South America, with his headquarters at Arequipa.

That on or about the 12th day of June, A. D. 1885, your memorialist was, by the order of the prefect of the city of Arequipa, Peru, Col. Don Manuel San Roman, without any cause or provocation, arrested and imprisoned in the San Francisco Barracks, at Arequipa, and while so imprisoned and in such confinement your memorialist received from the said prefect a communication, of which the following is a true copy:

"Give by telegraph the necessary orders to completely destroy the railroad track between Cachendo and La Joya. You have time to comply with this terminal order until to-morrow early, because being, as you are, in the power of the authority, who has to perform its duty in these circumstances, the mere fact of the fugitive engine attempting to pass La Joya in direction of this city will put me in the case of shooting you without the least delay, as you are the only person responsible for what has happened.

"God guard you.

"MANUEL SAN ROMAN."

At the foot of which official note the following instructions are given:

"Mr. Tamays, resident engineer: Please dictate the necessary measures to carry out the above-indicated order of the prefect. V. H. MacCord, San Francisco Barracks, 'Fecha ut supra.'"

Seventh. That some time after the receipt of the foregoing note or communication an officer came to the cell in which your memorialist was confined and advised him to arrange his affairs, as there was an order to shoot him within an hour, and that in less than half an hour afterwards he was marched out to the parade ground and stood up before a file of soldiers armed with rifles, and asked if he wished to say anything, as he was about to be shot; whereupon your memorialist replied that he had committed no crime, no offense, and had nothing to say. Thereupon three or four of the officers retired a short distance and appeared to consult among themselves for a moment, when one said, "It is not good to kill a man," and then led your memorialist back to the cell from which he had been taken.

Eighth. That upon the following day your memorialist was verbally notified by the subprefect that by order of the prefect your memorialist must pay a fine of 10,000 soles, and that it must be paid at once or severe measures would be taken against his person to compel the payment, and that no delay would be allowed, when your memorialist replied that it was entirely unjustifiable to impose a fine implying culpability without even a semblance of investigation, and asked that a trial be given him, which was refused.

Ninth. That soon after the entire foreign colony resident in the city of Arequipa went in a body to the prefect's house and obtained from him a promise to have your memorialist (still a prisoner) confined in some other place which offered more security for his life, and that he would be given a prompt trial in accordance with the laws of the country.

Tenth. That on the following day, June 14, notice was given your memorialist, by verbal message from the prefect, that if the 10,000 soles was not paid before 3 o'clock on the afternoon the "extreme measures" threatened would be applied and the fine increased to 15,000 soles, and if delayed longer to 20,000 soles; whereupon your memorialist again protested against the illegality of the fine, and demanded the trial promised the night before to the consular corps and to the several members of the foreign colony, which was refused and threatening replies only received.

Eleventh. That your memorialist, convinced of the arbitrary and brutal proceed-

ings which were evidently to be employed to compel payment, it was suggested that the amount of the fine (although entirely unauthorized) be deducted from the balance due your memorialist's employer, the railroad company, from the Government for work done, but that was refused.

Twelfth. That on the morning of the 15th of June, 1885, your memorialist was informed that by order of the prefect your memorialist could not be allowed either food or water, and that every article of furniture be removed from his cell, which order was forthwith carried out, such cell being a damp one with a brick floor, and your memorialist was compelled to stand, as everything, even to a rough stone, which might have served as a seat, was taken away.

Thirteenth. That it being impossible to exist without food or drink—thanks to some of the commercial houses of the city of Arequipa—the money was raised, to wit, the sum of 10,000 soles, and paid, and at 3 o'clock in the afternoon your memorialist was allowed to go at liberty.

Fourteenth. That in view of and in consequence of the foregoing recital of acts of indignity, barbarity, and illegality, your memorialist lost no time in making protest before Hon. Alex. Hartley, acting British vice-consul, at the British vice-consulate, on the 16th day of June, 1885, against the arbitrary, abusive, and barbarous proceeding of the aforesaid prefect of Arequipa, Col. Don Manuel San Roman, declaring that the 10,000 soles in silver were paid under pressure and threats of violence, reserving the right to make claim to a higher authority, and to appeal to diplomatic means, if necessary, in defense of his rights, and that the first use made of his liberty was to enter such protest at the British vice-consulate, as aforesaid.

Fifteenth. That such protest was by your memorialist promptly forwarded to the United States legation at Lima, Peru, with the following certificate attached:

"Thus presented and declared in due form of law, at Arequipa, aforesaid, the day, month, and year first above written.

"ALEX. HARTLEY,
"Acting British Vice-Consul."

Sixteenth. That the said prefect on the 8th day of December, 1886, solicited the approval of his proceeding against your memorialist by the Peruvian Government, when, without either notice to or hearing of your memorialist, the Peruvian Government proceeded, under date of December 15, 1886, to approve and did approve of the said action of the said prefect, Col. Don Manuel San Roman, in the matter of which your memorialist was informed by official note dated the 22d day of December, 1886.

Seventeenth. That since the 13th day of June last (1888) your memorialist was again made the victim of Peruvian persecution by the authorities of Arequipa, Peru, confined and imprisoned in his own office for five days, so confined for twenty-seven hours without food or water, for the purpose of forcing your memorialist to pay the amount of \$3,000 for taxes levied on the railway by the authorities, although your memorialist was neither stockholder nor director in the said railway company, while his connection with it had ceased some time before; and of which oppression and barbarous treatment your memorialist made complaint, and of such abusive proceedings he protested before the English minister; and for all of which abuse, maltreatment, and persecution your memorialist makes complaint to you, the high official of his Government; and in such connection asks that reparation be demanded by the Government of the United States of the Peruvian Government, and your memorialist's claim of \$200,000 indemnity for the treatment herein complained of be promptly prosecuted.

And he will ever pray.

VICTOR H. MACCORD.
By S. NEWTON PETTIS,
His attorney, No. 302 Chestnut street, Meadville, Pa.

COMMONWEALTH OF PENNSYLVANIA, Crawford County, ss:

Mrs. Sarah Ann Allen, formerly Mrs. Dr. MacCord, being sworn, says that she was born on the 11th day of February, 1819, near Meadville, Crawford County, Pa.; that she is now a resident of Linesville, in the county aforesaid, and was in 1885; that Victor Hugo MacCord, now sojourning at Arequipa, Peru, in South America, is her son, and was born in the Commonwealth of Pennsylvania on the 18th day of January, 1842; that she has read the foregoing memorial of Victor Hugo MacCord addressed to the Honorable T. F. Bayard, and that the facts therein set forth are correct and true, as she verily believes, and that her said son, Victor Hugo MacCord, informed this affiant, when at home with her in 1883, that he intended to settle up his business and return home, and that he expected to accomplish that in a couple of years, and return to his home in Pennsylvania.

SARAH ANN ALLEN.

Sworn and subscribed before me, a notary public, September 17, 1888.

[SEAL.]

WILL S. ROSE, Notary Public.

COMMONWEALTH OF PENNSYLVANIA, *Crawford County*, ss:

Mrs. Mary Ada Gehr, being duly sworn, saith that she is the daughter by Mrs. Sarah Ann Allen, and was born May 27, 1862, at Espyville, in Crawford County, State of Pennsylvania, and that she has read the memorial of her brother, Victor Hugo MacCord, and believes that the statements therein contained are correct and true, and concurs with the statements of her mother with reference to the statements made by her brother in 1883, while at home, concerning his return to his home in Pennsylvania so soon as he could settle his affairs in South America.

MRS. MARY ADA GEHR.

Sworn and subscribed before me, a notary public, September 17, 1888.

[SEAL.]

WILL S. ROSE, *Notary Public*.

(See Ex. Doc. No. 18, Fifty-third Congress, third session, pp. 2, 3, 4.)

Mr. Adee to Mr. Pettis.

DEPARTMENT OF STATE,
Washington, October 3, 1888.

SIR: I have received your letter of the 2d instant inclosing a memorial in the case of Mr. V. H. MacCord against the Government of Peru.

A copy has been sent to our minister at Lima, who is giving the case his attention. I am, etc.,

ALVEY A. ADEE,
Second Assistant Secretary.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 19.)

Under date of September 3, 1888, Mr. Buck replied to Mr Alzamora as follows:

Mr. Buck to the Minister of Foreign Relations.

No. 112.]

LEGATION OF THE UNITED STATES,
Lima, September 3, 1888.

MR. MINISTER: In my interview of Friday last, in which references were made to my note No. 110, of August 6, 1888, and foreign office note No. 30, of August 28, 1888, in reply, relative to the outrages perpetrated upon Mr. Victor H. MacCord in June of 1885, under the orders of Señor San Roman, then in military command at Arequipa, your excellency indicated that it was desirable to have the reasons for the delay of Mr. MacCord in presenting his case stated in the form of a note to the foreign office.

In response it is to be observed, as I stated at that time, that there is no such thing as a bar by limitation of time affecting diplomatic rights; and, as a better expression of this view, I may quote from a dispatch of the State Department touching this subject in our relations with Chile as far back as 1844, in which the Secretary pertinently wrote:

"There is no statute of limitation as to international claims, nor is there any presumption of payment or settlement from the lapse of twenty years. Governments are presumed to be always ready to do justice, and whether a claim be a day or a century old, so that it is well founded, every principle of natural equity, of sound morals, requires it to be paid."

While, therefore, I apprehend judgment upon the question of delay in this matter is solely within the discretion of the United States Government, and the announcement that the reasons therefor have appeared satisfactory to it should be conclusive upon that point, still, as an evidence of disposition to meet your excellency's wishes as far as possible, I present the following statement and views thereon, suggested by your excellency's request and verbal expressions, made in the said interview.

Stated in brief, the facts appear substantially these: On June 11, 1885, the prefect of Arequipa, Colonel San Roman, then commanding the "Cácerist forces" in that section, who, according to your excellency's note, was in insurrection against the Government at Lima recognized by foreign powers, the United States included, made requisition on Mr. MacCord, the general manager of the southern railroads, in the employment of the concessionaire, Mr. J. L. Thorndike, for an engine and train of cars to convey troops to a point on the Mollendo division of the road, placing the train under the command of Sergeant-Major Valdez. While in charge of said officer the engineer detached the engine and made off with it to Mollendo, then in possession of the Iglesias forces.

Although Mr. MacCord was in no way responsible for this occurrence, it having resulted from the treachery of the engineer and the carelessness of the guard, he was thrown into prison and threatened by the prefect that if use was made of the runaway engine he would be shot. Thereafter he was placed before a file of soldiers and asked if he wished to say anything, and told that he was about to be shot. But after conference among the officers he was remanded to prison and ordered to pay a fine of 10,000 soles. Declining to do this, he was deprived of food and drink and left standing in a damp cell without furniture—even a stone which he had used as a seat being removed. Finally, after protest of the foreign residents of the city, headed by the consular corps, made in vain against the outrage, some commercial houses of the city raised the funds with which the fine was paid, and Mr. MacCord was then released; whereupon he immediately made protest on June 16, 1885, before Her Britannic Majesty's vice-consul, copy of which protest has been supplied the foreign office with my No. 110, of August 6, 1888.

At the time, and until recently, Mr. MacCord was in the employment of Mr. John L. Thorndike, as manager of the said railroads. Therefore, in deference to the interests and discretion of Mr. Thorndike, in view of his relations to the Peruvian Government as concessionaire of the said railroads, which it seems Mr. MacCord felt obligated to regard while himself Mr. Thorndike's employee in superintendence of said roads, he, Mr. MacCord, delayed presenting the matter to his Government until a change of circumstances relieved him from such considerations. When I add that the foregoing circumstances had been fully submitted to and considered by the United States Government before it instructed this legation to present the matter to your excellency, there only remains, I think, one more objection to your excellency to answer, that is, the assertion that as Señor San Roman was a chief in insurrection against the Government of Peru recognized by foreign powers, the United States included, your excellency's Government is not responsible diplomatically in premises, and that Mr. MacCord's only course, if his allegations are true, is to prosecute judicially the said San Roman upon a personal responsibility for his acts.

Your excellency, as a reason for this position, said (1) that there existed a law in Peru that the Government could not be held responsible for any acts committed by insurgents or revolutionists, and foreigners were tacitly accepted into the country under that condition; (2) that, according to universally admitted international law, a government could not be held responsible for mob or insurrectionary violence.

Concerning the first point, I apprehend that the only force such local law as that to which your excellency refers can have so far as affecting diplomatic relations is to establish at the outset that there is no adequate judicial remedy in Peru for claimant, since such local law bars recourse against the Government through the courts; consequently direct diplomatic intervention offers the only means open to Mr. MacCord as an adequate "remedy" for a manifest and notorious tort.

On the other hand, I may call attention to the fact that, so far from being in the country solely subject to the conditions of the local law referred to by your excellency, Mr. MacCord was here not only under the larger principles of international law, but under the incontrovertible guarantees of a treaty then existing between the United States and Peru, article 16 of which declared: "The high contracting parties promise to give full and perfect protection to the persons and property of the citizens of each other, of all classes." Again, in the said treaty of 1870, it was declared, the citizens of either country, within the territory of the other, "shall not be liable to imprisonment without formal commitment under a warrant signed by legal authority, except in cases *flagrante delictu*, and they shall in all cases be brought before a magistrate or other legal authority for examination within twenty-four hours after arrest; and if not so examined, the accused shall forthwith be discharged from custody." * * * Also, "they shall not be called upon for any forced loan or extraordinary contribution for any military expedition, or for any public purpose whatever, nor shall they be liable to any embargo or be detained with their * * * goods or effects without being allowed therefor a full and sufficient indemnification, which shall in all cases be agreed upon and paid in advance."

Since this treaty was in full force at time of the outrage, and until March 31, 1886, and as I have had occasion to remark in another case involving a like question, "was obligatory whether the state was that of war or peace, or whatever might be the circumstances of Peru during existence of the compact," the matter may probably appear as thus disposed of.

But concerning the general principle, even outside of treaty obligations—to illustrate how different has been the view of Peru at another time—I might refer your excellency to the correspondence between Mr. Seward and Mr. Barrada relative to the effort made by Peru to hold the United States Government responsible for the destruction of Peruvian property in 1862 on board a ship in Chesapeake Bay through the sudden attack of insurgents, notwithstanding the ship ventured into waters which were in the recognized limits of hostilities between the United States Government and the Southern States, at the time engaged not only in rebellion, but

in one of the most fiercely contested and protracted wars of modern times, so formidable in its nature that not only foreign nations, but the United States Government itself virtually conceded to the rebellious States, which had a distinct geographical as well as political autonomy, "belligerent rights."

Although, of course, such a contention on the part of Peru could not, under the circumstances, be sustained, still the incident is instructive as indicating, when Peruvians have been the sufferers, how widely the ideas of the foreign office have diverged from those now expressed by your excellency.

Here, too, I may refer to Note 95, of August 31, 1878, of Mr. Gibbs to Dr. Manuel Yrigoyzen, then minister of foreign relations of Peru, in a claim growing out of mob violence, in which allusion is made to the Spanish claims for losses, etc., caused by mobs in New Orleans and in Key West in 1851, which were paid by the United States Government, of which I have made mention in the course of conversation with your excellency.

Under date of June 20, 1834, Mr. McLane, Secretary of State, wrote concerning a contention of Mexico, similar to that made by your excellency:

"The mere revolutionary state of a part of Mexico can not be accepted by the United States as a defense to a claim on Mexico for injuries inflicted on citizens of the United States in Mexico in violation of treaty engagements."

I may also quote the language of Mr. Fish, Secretary of State, to Mr. Foster in Mexico, dated August 15, 1875, as follows:

"If a country receives strangers within its limits, it thereby incurs a liability to protect them from violence, not only on the part of its own authorities, but ordinarily also from violence on the part of insurgents. This latter ground of liability may be regarded as continuing at least until the Government of a neutral country whose citizens may be aggrieved in the course of the hostilities shall recognize the insurgents as entitled to belligerent rights."

I need hardly remind your excellency, so far as known, there had been no concession of belligerent rights to the revolutionary Government to which pertained "Señor San Roman" when the outrages were perpetrated on Mr. MacCord, either by the Government of Peru, recognized at the time by foreign countries, or by any foreign nation diplomatically represented in this capital.

In conversation your excellency asked me, as though the question itself involved a refutation of the idea of national responsibility, for the acts of the said "Señor San Roman," would not the United States Government have indignantly rejected a claim made against it for the acts of the Government of Jefferson Davis? To which I replied that I should have to know the character of such claim in order to properly answer your excellency. But, perhaps, in general terms I had better let the words of the State Department stand for themselves on this point:

Those from the Secretary of State to Mr. Foster, dated December 16, 1873, are:

"It is true that this Government has not confessed its liability for the injuries to foreigners by persons claiming authority in the South during the rebellion. The reason for this disavowal is believed to be belligerent rights had tacitly, at least, been granted to the insurgents, not only by this Government but by those of the principal European nations. This is a concession which may be allowed to carry with it an acknowledgment that the party in whose favor it may be made is both competent and willing to do justice to the citizens or subjects of the grantor, and, indeed, may of itself be allowed to exempt the other party from such accountability * * * the foreigners who were so injured are citizens or subjects of countries who acknowledge the insurgents as belligerents."

But whatever may be the different opinions as to the general international rule concerning responsibility or nonresponsibility of a government for revolutionary violation of personal and property rights of neutrals, and whatever its limitations or qualifications, this case in reality involves other reasons that place it upon more elevated grounds of equity, the irresistible force of which, I think, will be apparent.

Your excellency has commented upon two distinct Governments existing in Peru at the time of the MacCord outrage; but it will be remembered that by the act which Generals Cáceres and Iglesias signed December 2, 1885, both Governments were, by their mutual consent, merged into the Provisional Government then established, of which the present Government, by popular and peaceable determination, made under the authority and administration of said Provisional Government, is the successor; so that whatever may have been the character of either the Iglesias or the Cáceres Governments, by consent of each and of the people of Peru, given through the subsequent elections, the present constitutional Government reigns as the successor of both, and hence should be considered responsible for the acts committed by the officials, or under the authority of both, so far as they affect the interests of United States citizens.

Mr. Gallatin wrote, February 11, 1824, to Mr. Pierce:

"The doctrine that the present Government of France is not responsible for any injuries committed against the Americans by that of Bonaparte is so contrary to

the acknowledged law of nations * * * that it is not probable that it will be officially sustained."

And President Jackson stated in his message, 1835:

"The defense to a diplomatic appeal for redress for spoliation, that the wrong was done by a former sovereign, who was a usurper, is unfounded in any principle in the law of nations, and now universally abandoned, even by those powers on whom the responsibility for acts of past rulers bore most heavily."

The "French Spoliation Claims" were, it may be remembered, therefore finally settled by France.

I might add that upon dissolution of the Colombian Confederacy the United States Government, in 1839, informed its members that it would hold them jointly and severally liable for our claims. That case was simply inverse to this—in Colombia there was dissolution and in Peru there was consolidation of powers, perhaps making this case, therefore, the stronger upon principle.

In June, 1885, General Cáceres was the head of one of the contending governments in Peru, neither of which exercised supreme control over the whole of the national territory. But after mutual arrangement, as above referred to, under the act of December 3, 1885, on the 3d of June, 1886, General Cáceres, to whose government Colonel San Roman had pertained in his occupancy of Arequipa, was installed as the constitutional President of the Republic. This was done after due ascertainment of the popular will, and by the proclamation of the Peruvian Congress, assembled, as stated by the Provisional Government, in fulfillment of the arrangement of December, 1885, made between Generals Cáceres and Inglesias.

The outrages perpetrated against Mr. MacCord in June, 1885, were of general notoriety at the time, and of such a character as excited general indignation among foreign residents in Arequipa to an extent that elicited their united action in remonstrance and in a demand for legal trial, which, in violation of treaty and legal guarantees, was not accorded; nor was Mr. MacCord released until the money was raised and paid to the said Colonel San Roman, exercising authority under the government of General Cáceres, to the benefit of which the funds so paid accrued, in the defense of the cause of General Cáceres, and in resisting the "Lima Government."

The above circumstances are believed to be of public notoriety, and at least in the main undeniable, but they are referred to subject to correction in any details if not accurately stated.

I may quote as pertinent to the imposition placed upon Mr. MacCord, language used relative to other acts of a similar kind in behalf of the same political partisans, and about the same time, viz, the seizure of certain guano at Mollendo appearing to belong to United States citizens, which is equally applicable here. "It was appropriated to sustain a cause which has become national by the voluntary action of the people of Peru, its chief representative being at the present time the duly elected constitutional executive of the Republic"—with this difference, the seizure of the guano was not, it seems, accompanied by acts of personal violence and cruelty.

Moreover, this same San Roman was retained as prefect of Arequipa, first by the Provisional Government of the council of ministers, and then by that of the present Government; and not only so but the same "Señor San Roman," upon the expiration of a two year's term as such prefect under the present administration of General Cáceres, has been recently reappointed to the same office, with an official statement that his services have been satisfactory to the Government of Peru.

Thus the responsibility of your excellency's Government for the said acts of Prefect San Roman not only seen fixed by the arrangement of December 2, 1885, and the triumphant succession, in pursuance of it, of General Cáceres to the chief executiveship, but that responsibility seems still further emphasized by the consecutive reappointment of Colonel San Roman to the same post in which the outrages were perpetrated on Mr. MacCord, and by the public official approval of his acts in the decree making the reappointment dated August 11, 1888.

Trusting that your excellency will, with this fuller presentation, recognize the justice of the observations, respectfully presented, I avail, etc.,

CHAS. W. BUCK.

[Postscript.]

SEPTEMBER 11, 1894.

SIR: since writing the above I have just received your No. 224, of August 14, inclosing copy of letter from Hon. S. N. Pettis, and copy of protest "touching alleged outrage" on Mr. V. H. MacCord.

Before writing that dispatch Department had been fully advised in this matter, and furnished copy of Mr. MacCord's said protest, with my No. 366, of May 24 last, as shown by its instruction No. 208, of June 23, 1888.

Your obedient servant,

CHAS. W. BUCK.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 14, 15, 16, 17.)

Mr. Alzamora to Mr. Buck.

No. 34.] MINISTRY OF FOREIGN RELATIONS OF THE REPUBLIC OF PERU,
Lima, November 6, 1888.

MR. MINISTER: The necessity, firstly, of obtaining certain information, and, secondly, the urgent and deep occupations of the Government during the last few days, have not allowed me to give attention to your excellency's dispatch of the 13th (3) September, No. 112, relative to the claim of Mr. Victor H. MacCord, growing out of the collection of a fine of 1,000 soles, imposed in June, 1885, by the prefect of Arequipa.

Your excellency begins by demonstrating that in the course of diplomatic claims there is no prescription, supposing that my Government places in doubt this abstract principle; but the circumstance of my calling your excellency's attention to MacCord having permitted so long a lapse of time before asking your excellency's intervention, without hindrance in doing so, has no such meaning.

Said circumstance involves such gravity that your excellency has thought necessary to express the reasons why MacCord has abstained until now from making any claim, and my Government finds in such explanations, thankfully acknowledged, much light in forming an exact opinion upon the claim which is the subject of this note.

Further light is obtained through the information to which I made reference at first, and which my Government has collected in order to be acquainted with the whole matter, notwithstanding the reasons for declining, *prima facie*, all responsibility, as shown in my dispatch of August last.

My Government sustains in general said reasons, notwithstanding your excellency's exposition, and insists on the principle that it is not responsible for revolutionary acts, nor for the damages occasioned as the inevitable effect of operations of war, even if done by its own forces; but it has reasons to consider in the present case the fine imposed by Prefect San Roman as emanating from legitimate authority, as it frankly so declares, and for this reason it has resolved to study the case of MacCord, at the same time that it puts aside from the discussion the mentioned principles that have no application in the present case.

From MacCord's protest, as well as your excellency's explanations, kindly transmitted in the dispatch which I answer, and the information obtained by this office, it appears that the fine was not imposed on MacCord individually, but on the railroad of which he was the representative.

I find in MacCord's protest the following words:

"Convinced of the arbitrary proceedings that undoubtedly would be employed to enforce the fine, a proposition was made to deduct it from the amount the Government owed to the railway for work done."

And afterwards, alluding to the necessity he had of borrowing money to pay the fine, he says:

"That in consequence of the almost complete stoppage of traffic during the past year, owing to political disturbances, the railway company had not earned enough even to pay its workmen."

According to the explanations contained in your excellency's dispatch, which I answer, MacCord had not formulated his protest until the present because he was an employee of Mr. Thorndike, as administrator of the railways, and deference toward said gentleman, and consideration for his claims pending against the Peruvian Government, led him (Mr. MacCord) to believe that he should await a change of circumstances which should free him from such considerations.

Finally, through the information collected by this office, it appears that the fine was caused by the railroad represented by MacCord having placed itself in accord with Col. Garcia y Garcia, who left the cars at Mollendo in an expedition against Arequipa, then defended by Prefect San Roman, and deliberately leaving at Mollendo, or at its neighboring stations, cars and wagons enough to transport the attacking forces, notwithstanding the imperative orders that had been communicated to him beforehand; and, finally, that he changed the driver of an engine that Prefect San Roman had ordered out, in order to carry out the plan of escaping, and handing it over to Col. Garcia y Garcia's troops, thus enabling them to cross the desert that separated them from Arequipa.

I have likewise ascertained that the fine was not imposed upon Mr. Victor H. MacCord personally, but upon the railroad company; that said company paid it, charging it in the books that MacCord still keeps, having deducted afterwards the amount from the salaries of the Peruvian employees.

I believe it unnecessary, Mr. Minister, to make reflections on the foregoing facts in order to satisfy your excellency that MacCord's claim has no just foundation, and consequently I have the assurance that your excellency will not find it strange that my Government, after taking it in serious consideration, should maintain that it can not be admitted.

I renew, etc.,

ISAAC ALZAMORA.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 23, 24.)

[Mr. Buck in reply.]

Mr. Buck to Minister of Foreign Relations.

No. 120.]

LEGATION OF THE UNITED STATES,
Lima, November 14, 1888.

MR. MINISTER: I have received your excellency's note dated the 6th instant, and replying I may first rectify its error as to the amount of the imposition placed upon Mr. MacCord in June, 1885. It was not 1,000, but 10,000 soles, as shown in the copy of Mr. MacCord's protest accompanying my No. 110, of 6th August last, to the foreign office.

The two points of defense adopted in your excellency's preceding note (No. 34, of November 6, 1888) were:

1. The delay in presenting the claim; and,
2. That the acts complained of, if committed, were those of an insurrectionary or revolutionary commander, for which the Government of Peru could not be responsible, and which induced the conclusion on its part that Mr. MacCord's only recourse was against the said San Roman as an individual wrongdoer. Your excellency concluded from these considerations that the claim was not admissible as a diplomatic one; and, therefore, the Peruvian Government could not even examine into it. These views occasioned the presentation of principles involved, as set forth in my No. 112, of September 3 last.

I now observe your excellency states that the objections made on account of delay do not reach to the point of prescription, but that such delay was a grave circumstance which required explanation; and while your excellency holds that the Peruvian Government maintains in general, notwithstanding the exposition of principles presented by this legation, that it is not responsible for acts of revolutionists, nor for damages caused even by its own forces as the inevitable effect of the operations of war, yet it has reasons to consider, in the present case, that the fine imposed by the prefect, San Roman, emanated from a legitimate authority, as it "frankly declares," and so had decided to enter upon a study of the case of MacCord; at the same time putting to one side discussion of the before-indicated principles, which your excellency believes do not apply to the facts as alleged now on behalf of the Peruvian Government.

Perhaps the tardiness of this admission, however now "frankly declared," was due to noninvestigation of the facts in this case, relative to which the foreign office note of August 28 last stated your excellency's Government had no information, etc. This supposition seems more pertinent in view of advices which I have just now received, that the said prefect, San Roman, on December 8, 1886, solicited approval of his proceedings referred to against Mr. MacCord, which the Government granted without even notice to or a hearing from him, under date of December 15, 1886, of which Mr. MacCord was informed by official note dated December 22, 1886. Presumably the proper office of your excellency's Government has a record of the correspondence, so that if this information, received since my last note on the subject, is in any way faulty, your excellency can indicate where it is so.

Had this been known at the date of my note of September 3 last it might have avoided the necessity for reference to some circumstances therein presented, as it was your excellency's former line of defense that also induced the discussion of principles in my said note, as hereinbefore stated.

At any rate, since your excellency has apparently abandoned the position taken in your excellency's former note relative to the Government's nonresponsibility because of the said Colonel San Roman's therein alleged revolutionary character, I conceive there remains now no question as to the responsibility of the Peruvian Government for the indicated acts, according as their true nature may be demonstrated.

The facts your excellency alleges to be: That the railroad enterprise represented by Mr. MacCord placed itself in harmony with Col. Garcia y Garcia, the Iglesias commander in charge of the expedition which landed at Mollendo for the purpose of opposing itself to those of the said Colonel San Roman at Arequipa; that Mr. MacCord, contrary to the said Colonel San Roman's orders, left sufficient cars for the transportation of the Iglesias expedition from Mollendo to Arequipa, and afterwards changed the engineer of one locomotive which Colonel San Roman had ordered for the service of his forces, in order to realize a plan of escape, as it did escape to the forces of the said Col. Garcia y Garcia, thus enabling the latter to pass over the desert which separated his forces from Arequipa; and, finally, that the fine was not imposed on Mr. MacCord personally, but upon the enterprise (empresa), which paid it and entered it in books which MacCord conceals or retains, having discounted afterwards its value from the salaries of Peruvian employees.

As to these allegations made by your excellency's Government, it would seem for the present, at least, only necessary to note that, as this is the assertion of "new

matter," it is incumbent upon the Peruvian Government to prove what is asserted—since in such state of the case the maxim "onus probandi incumbit qui deicit non qui negat" applies; and until the evidences are presented, which presentation your excellency's Government has not yet made to this legation, it would seem unnecessary to consider what importance, if any, attaches to the allegations—as until presentation of proofs it is impossible to examine their relevancy or scope. Therefore, with such lights as this legation has upon the matters, it seems impossible to admit the said allegations on the part of Peru as an explanation justifying the acts complained of; and especially is this the case when it is noted that your excellency is pleased to treat the matter as though recovery of the fine ("multa") is the sole question involved, whereas that is only one feature of it, and by no means, as I conceive, the totality, or even the determining circumstance, affecting Mr. MacCord's rights.

However, as to the fine of ten (not one, as stated by your excellency) thousand soles, I do not understand that your excellency claims, as I apprehend it can not be claimed, that it was imposed under existing laws, or in a legal way, or by judicial or proper process. Nor do I understand that the laws of Peru (though I express my ideas, if in error as to them, subject to correction by those better versed than I am in them) admit that a mere employee can be imprisoned and tortured, and even confronted with execution, in order to enforce the payment of a fine imposed confessedly not upon himself personally, but upon the company or enterprise (empresa) which he may represent.

But whatever may be the Peruvian law generally applicable to such state of case as is alleged by your excellency's Government, it could not apply here, because there was a higher law in force at the time, so far as United States citizens or their interests were concerned, in the shape of an existing treaty.

To the relevant provisions of that treaty I observe your excellency makes no reference, although I called attention to its very pertinent guarantees in my previous said note of September 3 last. Neither does your excellency refer to the important additional evidence presented with my note No. 119, of the 31st ultimo, in which the various consular officers at Arequipa, with numerous other residents and persons acquainted with the facts in this case, testify to the correctness of the allegations of Mr. MacCord's protest, presented, as stated, with my No. 112, of September 3, to the foreign office, which allegations do not agree with the views expressed in your excellency's note of the 6th instant, at least so far as that note charges complicity upon Mr. MacCord in the attempt the Iglesias forces, and in purposely leaving cars within the reach of, and running off an engine to, those expeditionary forces under Col. Garcia y Garcia.

It not only appears from the protest of Mr. MacCord (which was not made recently, as your excellency assumes, but on June 16, 1885, immediately after the event, as will be seen from its date, though only officially presented to this legation some months ago for the reasons explained), but over the attesting names of the thirty-nine consular officers and others signed to the certificate, copy of which has been, as before mentioned, sent to the foreign office, that, in plain violation of said treaty provisions, without legal writ of process, Mr. MacCord was committed to imprisonment on June 12, 1885, and, without legal or judicial examination, he was continued in prison until 3 o'clock p. m. of June 15, 1885; and not only was he so committed to prison and detained for more than twenty-four hours without examination or trial, in violation of treaty guarantees, but was, in still worse violation of treaty obligations, during such illegal imprisonment, tortured with inhuman treatment, and even confronted with threatened execution; and was only thereafter released upon payment of an illegally and violently imposed fine of ten (not one) thousand soles. These facts alleged by Mr. MacCord, and proved before the English vice-consul over his signature, and those of the said some thirty-nine consular officers and other persons in Arequipa, I do not understand your excellency to controvert.

The same signatures attest that "the running away of the engine was due to the perfidy of the engineer and the carelessness of the officer and troops placed in charge of it by the said Colonel San Roman," "there being absolutely no blame attachable to any employee of the railroad except the engineer who ran away."

The statement of said protest and numerous signed certificate, quite contrary then to the views expressed by your excellency, seem to show that Mr. MacCord was not responsible for the flight of the engineer with the locomotive to the Iglesias forces, but that circumstance resulted from the negligence or fault of Colonel San Roman's own forces that had been placed in charge of said locomotive.

But even if the question of the fine be put to one side for the present, which, however, I can not admit can be done, over and above that remains, apparently uncontroverted, the wrong and violence committed against Mr. MacCord's person in disregard of all right, and, as I understand, of Peruvian laws themselves, and in plain violation of treaty guarantees; hence, whether the fine was imposed on him personally or upon him as the representative of the railroad, and whether or not charged on the railroad's books and afterwards discounted, Mr. MacCord has inde-

pends his claim against the Government of Peru for proper reparation as to the wrongs committed against himself.

In conclusion, I must therefore again refer your excellency to the treaty provisions then—viz, in June, 1885—in full force, as cited in my preceding note of September 3 last, in this case, one of which guarantees I beg to emphasize and to impress upon your excellency's attention by placing its language in juxtaposition to the facts and considerations that precede, which, found in article 15, reads:

"The said citizens shall not be liable to imprisonment without formal commitment under a warrant signed by a legal authority, except in cases *flagranti delicti*, and they shall in all cases be brought before a magistrate or other legal authority for examination within twenty-four hours after arrest; and if not so examined, the accused shall forthwith be discharged from custody. Said citizens, when detained in prison, shall be treated during their imprisonment with humanity, and no unnecessary severity shall be exercised toward them."

I have just received from the Department of State at Washington a copy of Mr. MacCord's memorial to his own Government, in which he states his claim for indemnity against that of Peru, for treatment complained of, at \$200,000.

I reiterate, etc.,

CHAS. W. BUCK.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 24, 25, 26.)

Mr. MacCord to Mr. Buck.

AREQUIPA, November 15, 1888.

DEAR SIR: Your esteemed favor, dated 9th instant, is at hand. In reply I beg to state that I have never pretended that the fine was paid by me; it was paid by Mr. Thorndike, and the statement that it was afterwards discounted from Peruvian employes, or any others, is entirely false. Neither do I make claim for the fine; my claim is for the unlawful, barbarous, and inhuman treatment to which I was subjected to compel the payment of the fine. For this I have asked a money indemnity of \$200,000 or such other as the Government of my country may consider a proper recompense for the sufferings and indignities inflicted upon me, such as being confined in a cell without either food or water or any article of furniture allowed me; being led out at night and stood up before a file of armed soldiers to be shot, etc., as detailed in my protest, and certified to by the whole community of Arequipa.

I deny that any responsibility for the escape of the engine can in justice be attributed to me. The train was put under the charge of the officer designated by the prefect in his note dated June 10 (which original, with signature certified to, has been sent to you), and an armed guard was by him placed in the engine. But in any case I claim, and did demand at the time, that an investigation should be made as to the facts of the case in order to demonstrate the truth, and fix the responsibility where it properly belonged. Had this been done I could not have complained; but it was never done, and there are people here who think it would not suit the Government to do it, as it might be shown that their own officers were implicated; be this as it may, it should be borne in mind that my claim is not for the fine imposed on the railway, but for the arbitrary, illegal, and outrageous treatment to which I was subjected in connection with it, and the refusal or failure to grant me trial or hearing in accordance with the laws of the country.

The statement that I was "in accord with the Iglesias commander" is false and can not be substantiated. I never had any communication, either directly or indirectly, with any person engaged in or connected with the expedition. In regard to the cars left on the road, I disclaim any responsibility for it. The prefect gave an order to bring away the only engine remaining in Mollendo, and with it all the cars remaining there, and which had been kept there, with his consent, as necessary to do the work; and on no account to permit an engine to go out from here except by his order. This order (to bring away the cars) was delivered to Mr. Braun, the general manager, who was here at that time, and as it was utterly impossible to bring up all the cars with one engine, Mr. Braun went personally to the prefect's house to explain and consult the matter with him. The prefect would listen to no proposal for sending more engines to bring away the cars, and declared that he had given orders to burn all that were left on the road by the engine coming up. We could, therefore, do nothing more in the matter, and the responsibility rested with the prefect.

As to my having changed the engineer on the runaway engine, this is also false. The circumstances were as follows: The prefect specified a certain engine, and that engine had just come in, having been out all night on the same kind of service; and

when the engineer complained to the master mechanic that he had had no sleep the previous night, and could not stand it another night without sleep, that chief named another engineer to go along for the purpose of watching the engine at night in case they should be kept out. With this I personally had nothing to do, but did approve when advised of it, as I had not a suspicion that we had among the engineers a single one who would be capable of running away with an engine, even if no guard had been kept on them, as was the invariable custom at the time. How the guard came to leave the engine and thus allow of its being taken away has not, so far as I am aware, ever been inquired into; but I certainly do not, and did not at the time, consider that the responsibility rested upon us to prevent such a thing happening. I gave the train into the possession of the officer and charged the conductor and engineer to be careful not to fall into the hands of the opposing forces by any act of their own, and to that end I cautioned the conductor not to allow himself to be separated from the said officer under any circumstances; but I never thought it necessary to caution anybody against running away with the train or engine, much less the latter with a guard of soldiers on it.

In conclusion, I do not think the question of the fine needs to be taken into account. What I ask for is redress for not having been treated according to the laws of the country; and the investigations they are pretending to make now would have been more in order in June, 1885; nevertheless, I am perfectly willing to have them made now and to abide by the result.

Yours, respectfully,

V. H. MACCORD.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 26, 27.)

By further reference to the papers and correspondence transmitted to the Senate by the Secretary of State (Ex. Doc. No. 18, Fifty-third Congress, third session, p. 5) it appears that subsequent to the filing of MacCord's memorial touching the brutal treatment measured to MacCord in June, 1885, renewed indignity was offered to him, and insult to the national flag, as will be seen below:

In the matter of the memorial of Victor H. MacCord, a citizen of the United States, now sojourning at Arequipa, Peru, South America, addressed to the Honorable Thomas F. Bayard, Secretary of State of the United States.

Affidavit of Mrs. Sarah A. (MacCord) Allen, residing at Louisville, Crawford County, Pa.

CRAWFORD COUNTY, ss :

Mrs. Sarah Allen, being sworn, says that she is the mother of Victor H. MacCord above named, now sojourning in Arequipa, Peru, South America, and has been shown a letter from her son under date of October 4, 1888, addressed to S. Newton Pettis, of Meadville, Pa., in which the following appears:

"As I wrote you in my last, Mr. Thorndyke's house in Mollendo, in which was established the United States consular agency, was taken forcible possession of with armed soldiers on the 20th, and the consulate closed and the shield taken down. The minister in Lima claimed and the Government offered him to return the house immediately, which, however, has not been done up to this time, although I have called almost daily, in reply to inquiries by cable, that nothing has been or is being done toward returning the house. Meanwhile the consulate remains closed to the agent, and no business can be transacted by him."

That her son, she is informed and believes, is and for some time past has been the acknowledged consular agent of the United States in Peru, South America; and further saith not.

SARAH A. ALLEN.

Sworn to and subscribed before me January 24, 1889.

WM. PENTZ, Alderman.

JANUARY 31, 1889.

I hereby certify that William Pentz, before whom the foregoing affidavit was sworn to, is a duly acting alderman in and for the city of Meadville, in the county of Crawford and State of Pennsylvania.

S. NEWTON PETTIS,
Solicitor for V. H. MacCord.

DEPARTMENT OF STATE,
Washington, February 13, 1889.

SIR: I have to acknowledge the receipt of your letter of 31st ultimo relating to the alleged outrage on V. H. MacCord, an American citizen, in Peru, in 1885, to which your letter of August 2 last referred.

A copy of your letter has been sent to our minister at Lima, as supplementary to the statement made under your hand, sent him on 14th August last.

I am, etc.,

G. L. RIVES, *Assistant Secretary.*

L. NEWTON PETTIS, Esq.,
Washington, D. C.

The committee present the foregoing as a full exhibit of the records of the State Department in this case, chronologically arranged, from the time of the alleged outrage against both the liberty and life of Victor H. MacCord in June, 1885, then a consular agent of the United States in Peru, to February 13, 1889, less than three weeks before the change of the administration of this Government on the 4th of March, 1889, and touching the true estimate of the character of Prefect San Roman, by whose order the outrages and crimes were committed against MacCord, in connection with his notorious and disgraceful administration while prefect of Arequipa in 1885, which is best disclosed by editorial notices in the Peruvian press of 1890, seen below:

[El Comercio, September 11, 1890.]

NUEVOS PREFECTOS (NEW PREFECTS).

The general, Don Manuel Velarde and Don Pedro Jose Rinza having renounced, Col. Don Manuel San Roman and Señor Manuel Elias have been nominated, respectively, to be prefect of Callao and Ayacucho, the first having been until this date prefect of Arequipa, and the latter of Apurimac.

As interpreters of public opinion, we can and must congratulate Government on the favorable change realized in the prefecture of Ayacucho—Señor Elias having all the required qualities for a high administrative functionary; but we can not say the same respecting the change made in the prefecture of Callao, where General Valarde, a prudent and highly esteemed functionary, by his renouncement has opened the way to Col. San Roman, against whom innumerable complaints have been lodged during the time he was prefect of Arequipa.

We fully comprehend that political necessities impose certain considerations impossible to avoid in many cases, and this explains, in our opinion, the nomination which favors Mr. San Roman; but at the same time it can only be deplored that a population like that of Callao, which have always distinguished themselves by their civic virtues, should be made the victims of such considerations.

[Translation from the Opinion Nacional.]

LIMA, October 1, 1890.

RESIDENTIAL JUDGMENT.

Amongst the prefects recently nominated there are some who, as well on account of their antecedents as by force of law, can not fulfill the commission intrusted to them, and whose nomination the President of the Republic had better annul as soon as possible.

Col. Manuel San Roman, formerly prefect of Arequipa, and lately called to occupy the prefecture of Callao, after six years' service in his former place, is decidedly of the number of such prefects under responsibility. Besides many criminal lawsuits pending against him, and of which one of the most aggravating kind has been decided against him a few days ago by the supreme court, and besides being completely unable to be intrusted with such an important employment on account of his aggressive and reproachable acts, there is another question. According to law he must be submitted to a residential judgment, and during this time he can not have another commission of equal, and not even of less elevation.

The residential judgment on employees who have been in command of a department or province is a requirement which can not be omitted without counteracting

openly the law. The object of these judgments being to examine the behavior of such functionaries in order to ascertain if they are apt or not to be otherwise employed, and not to intrust a new place to those who have behaved badly in former occasions; and all this would result delusive in the present case if Mr. San Roman was to take charge of the prefecture of Callao without having been previously submitted to the corresponding judgment of residency respecting his term of office as prefect of the department of Arequipa.

Article 22 of the law concerning the interior organization of the Republic says terminally: The public functionaries cease *de facto* by the termination of one period, and the residential judgment will be effected, without which proceeding they can not be combined in the same charge nor be given another.

Mr. San Roman has been six years at the head of the prefecture of Arequipa. In this excessively prolonged term (exceeding twice the term stipulated by law) his misdeeds and abuses are known to the public; the press has denounced them frequently, and demand in high tones his punishment; private parties have accused him before the competent tribunal, and there are still pending lawsuits against him. Nothing would be more logical, then, than to submit him to a residential judgment, before taking charge of the new prefecture, to examine the accusations which have been made against him and see if they are well founded or only show that there has been a bad feeling against him. When anybody is in charge of a commanding public position and will govern obediently to the laws, without listening to his personal affections or disaffections, he will surely not elude this definite legal prescription. It would indeed be the summit of arbitrariness to despise the law and to obey the inspirations of favoritism and individual condescendence. The prefects and all public functionaries in general are bound to account for their acts; they must prove to have executed the law during the time of their commission, and this can not be obtained unless they are submitted to a residential judgment, this being the only means to prove their good or bad behavior.

By prescinding from this judgment the natural consequence will be the impunity; the most abominable abuses of the authorities will be established as a rule for future conduct; social morals will be deeply affected, and the people will accustom themselves to regard their governors as the hangman of their social privileges and of their immanent civic rights, instead of the natural protectors of their interests and guarantees.

If the acts of Mr. San Roman, committed in Arequipa, remain unpunished, what will he do, being prefect of Callao? Undoubtedly he will believe that by his abuses he will gain the esteem and good opinion of the chief of the state, and will consequently abuse as soon as he takes charge of that new situation, and will abuse still more than in Arequipa, because he can suppose that by so doing he will acquire a good right to occupy afterwards a still higher position in the political theatre.

The recent electoral period is that in which Mr. San Roman has extralimited himself most. There was no guaranty which he has not trampled under his feet, nor any right which he has not violated—and all this against the terminant orders of the candidate he proposed to favor. In this sad period horrible crimes like that of Paucarpata were committed, and sufficient blood was shed; a great many citizens were debarred from voting in order to convert the election, the most august act of popular sovereignty, into a shameful mockery; hundreds of citizens were thrown into prison only because they proclaimed a candidate who did not enjoy the good will of the prefect, and, finally, the public force has been employed to fight party battles, ill treating and arresting all the dissenter from their official ideas.

And in spite of all, this abusive and rash prefect is elevated to a better prefecture, putting aside the residential judgment, of which law a ridiculous contempt is shown. This can not be accepted; it can not pass without noticing, unless we renounce the right of fiscalizing belonging to every citizen in the Republic, to judge the acts of public men and to demand their submission to the sanction of law.

Mr. San Roman himself must ask for residential judgment in order to prove himself innocent in case he really thinks he is. He must not allow himself to be carried away by what he terms the passionate judgments of the press. If he is convinced that his acts being in authority were good and agreeable to law, he must from his free will invoke his vindication and ask for his judgment, in order to enable him to prove the sacrifice which he pretends to have made for the good of his country.

If he does not proceed in this manner, if he does not wish his acts to be assayed in the crucible of law, then he must confess the truth of all the inculpations which the press has registered, and confess that all the charges brought publicly forward against him are well founded; and then he must not accept the new prefecture given him, *because he does not merit to have it.*

It is high time to cast off this inconvenient silence, which has so often made us suffer abuses, in order not to give any pretense for disturbing public order. But now, when order is restored and nobody will reasonably fear any subversion, we must raise our voices to see the law obeyed and to expel from the public scene all those

who never merited to be authorities and never will be good ones, because their habits do not allow it and their education is opposed to it.

Let us hope that Mr. San Roman, before taking charge of the prefecture of Callao, be submitted in Arequipa to the judgment of residency prescribed by law, and of which the Supreme Government can not dispense, because this is not in its power and attributions, nor does it belong to his constitutional privileges.

We are sorry to have been obliged to this frank severity, but the insinuations made to the Government for the best of its own prestige not having produced any effect it is necessary, at least, to leave a testimonial of the justice of our request.

We demand nothing but what the law commands—the residential judgment. (See Ex. Doc. No. 18, Fifty-third Congress, third session, pp. 14, 15.)

About the same time Mr. Buck wrote Mr. Pettis, in answer to a note addressed to him at Midway, Ky., touching this case, saying:

In reply to your note received this afternoon, inquiring as to the status of the MacCord case when I left Lima, I may say I think that my last note to the foreign office was No. 120 of the foreign office series, and dated November last. That note was never answered, and I do not believe it can be answered. The new minister of foreign relations, just before I left, expressed to me regret that I was to leave so soon, and said he wished to settle the case, and asked me to make assurances of the good disposition of Peru in the matter to my Government upon my arrival; but upon my inquiry whether he would give shape to a basis of settlement, he said he was not prepared to do this, but would communicate to the Peruvian minister in Washington relative to the matter. Upon my return the State Department invited no consultation with me on the subject; so practically, as far as I know, the case stood, when I tendered my resignation on April 5 last, where my note of November 14 last, above cited, left it. I can only refer you to the Department for information as to said dispatch, which I observe is not published in the Foreign Relations for the last year, just out.

No action at all was taken by the State Department during the whole remaining portion of the year 1889, although the solicitor of Mr. MacCord was untiring and constant in his efforts to obtain consideration of the claim by the State Department, and failing therein, on December 24, 1889, presented to the President in person a clear, succinct, and yet elaborate résumé of the case, and six days thereafter was advised by Mr. Halford that the President directed him to say that he had read the statement left with him and that he would take occasion to confer with the Secretary of State on the subject.

Two years and a half afterwards, on September 17, 1891, Mr. MacCord's solicitor addressed a letter to the President, stating that he had not received, either from His Excellency or the State Department, any "information concerning the 'consideration' promised the last of December, 1889," and on September 23, 1891, received a letter from the President stating that he had received his (the solicitor's) letter of the 17th, in which his attention was called to the claim of Mr. Victor H. MacCord against the Peruvian Government, and that he had called the attention of the State Department to the claim, which was all he could do, as his time was too much occupied to give him the opportunity to take up the case and examine it upon its merits, adding that when Mr. Blaine returned his attention would be called to the matter.

The committee finds that Mr. MacCord was continually in communication with his solicitor, and was all the time advised of the action of the State Department down to March 4, 1889, and its nonaction after that date, and of its repeated refusals to hear or even see his attorney, and he subsequently approved of his solicitor's decision in the fall of 1891, to wait until a change of Administration took place, and for that reason declined to mention the matter of his claim to United States Minister Hicks while on a visit to Arequipa, several days' journey from the United States legation at Lima, who on his return trip volunteered a letter, given below, and which resulted in a correspondence that followed, which is given entire on pages 28 to 33, inclusive, Ex. Doc. No. 4, Fifty-third Congress, third session:

*Mr. Hicks to Mr. MacCord.*MOLLEND, *September 21, 1891.*

SIR: I inclose herewith the documents left with me by Mr. Griffith. I have looked them through carefully and they only confirm my previous impression of the enormity of the outrage. Why the Department has not acted in the case I am unable to say; but whatever the delay may be, you can rest assured that the Department is influenced by principles of international law applicable to your case, and principles which would govern England or any other nation in a similar case. I will report the fact of my visit here to the Department and ask for a statement of the condition of the case, so that we may be enabled to judge something about the causes which prevent its successful prosecution. From the partial examination of the facts which I have been enabled to make, not having the necessary authorities at hand for consultation, I am inclined to think that it may have been presented to the Department as coming under a class of cases growing out of a condition of war. In time of war subjects of a neutral nation caught between contending armies have little hope of redress, either for loss of liberty or of property, growing out of the legitimate prosecution of the war. This principle, as I understand it, is recognized by all civilized nations, and may possibly have a bearing in your case.

When I return to Lima I will look up the case as it appears in the records of the legation, and if I can learn anything which would be of interest to you I will communicate it to you at once. If I can be of any service to you at any time, in communicating with the Department or otherwise, you may be perfectly free to call on me.

Your obedient servant,

JOHN HICKS.

*Mr. MacCord to Mr. Hicks.*AREQUIPA, *September 23, 1891.*

DEAR SIR: I am greatly obliged to you for yours of the 21st instant, but I notice that you do not quite understand the nature of my complaint against the Government at Washington.

Had my case been given a hearing, and the Government have decided that there was no redress for the outrages committed, or that none had been committed, I should have undoubtedly thought it pretty hard lines, but would at the same time have accepted it as in accordance with international law and usages if so decided; but it has not been so, and what I complain of is that I can not get a hearing at all.

I do not want to bother you with the case, as I am convinced that it is useless to expect anything from the Government. Proof enough of this is the way the matter of the violation of the consulate at Mollendo was settled, and which caused my resignation of the consular agency there.

I can not, of course, pretend to discuss with you the point of whether the fact or circumstance of there being a revolution in the country at the time would or would not affect the case; but I will state that Mr. Gibbs, then minister of the United States in Bolivia, and a man of long experience as minister to foreign countries, assured me, when the circumstance of my imprisonment occurred, that the United States Government would immediately attend to the case, and that without doubt reparation would be demanded.

Not long ago two Americans were killed in Bolivia, and the fact that a revolution existed at the time did not prevent our minister taking up the matter, and going himself to the spot to investigate it; nor was it made a pretext by Bolivia for not punishing the criminals. Again, only very recently an American citizen was arbitrarily arrested and thrown into prison in Concepcion in Chile, on some frivolous pretext, and although a revolution or civil war was raging our minister demanded and secured immediate redress.

I repeat, that I am not inclined to do anything more in my own case. The time has gone by when a solution favorable to me would have had a good effect here; but I do feel hurt, and the pride which we all ought to feel in being citizens of such a glorious country is in me considerably humbled.

Thanking you for the interest taken in my behalf, and your kind offers in connection with the prosecution of my claim, I beg to subscribe myself,

Very respectfully, yours,

V. H. MACCORD.

*Mr. Hicks to Mr. MacCord.*LEGATION OF THE UNITED STATES,
Lima, October 4, 1891.

SIR: I have the honor to acknowledge receipt of your esteemed favor of September 23d, which has had my careful attention. I have also given a partial examination of the case as it appears of record in this legation. From all I can learn

through your letter, from the representations of your friends, and from the records, I am of the impression that you are laboring under a serious misapprehension, and that the delays and apparent neglect shown can be explained entirely to your satisfaction.

First, let me allude to your letter of the 23d ultimo.

In my letter of September 21 I alleged, as affording possibly some explanation of the delay or refusal of the Department to press the claim now, that "in time of war subjects of a neutral nation caught between contending armies have little hope of redress, either for loss of liberty or of property growing out of the legitimate prosecution of the war."

I made this statement as a conjecture, not as decisive of anything. In reply, you allude to the case of Americans murdered in Bolivia, and state that the minister at once took up their case. I can only say that the Bolivian case is not at all like yours, as it appears to me, for the reason that it does not appear that the Americans were murdered "in the legitimate prosecution of the war," but simply by thieves or outlaws. The case of the American imprisoned at Concepcion, Chile, seems to be also of a different nature from yours, as the pretext does not appear to have any connection with the revolution.

Second. I was told by your friends that you had properly placed your case before this legation at once, to wit, in June, A. D. 1885, and that three different American ministers had allowed it to slumber without giving it the attention it deserved. I learn from the records that your case was first presented to this legation May 24, 1888, almost three years after the outrage. It was immediately taken up by Mr. Buck, and presented to the Department in several very strong dispatches on the subject. By order of the Department it was presented to the Peruvian Government by my predecessor, Mr. Buck, in an exceedingly forcible, eloquent, and elaborate statement and argument in your favor. In fact, since it was placed in Mr. Buck's hands it appears to have been repeatedly urged upon the attention of the Peruvian Government. I find, also, that on the 9th of November, 1888, Mr. Buck wrote you the result of his investigations as follows:

"He (the Peruvian minister of foreign affairs) has been led by my note to investigate the facts, and finds that you were in accord with the Iglesias commander, and, contrary to the orders of the prefect to remove all rolling stock, having left cars on the railroad for the use of those forces. You changed the engineer on the runaway locomotive so that he made off with it to the Iglesias commander, thus enabling him to cross the desert in his movement on Arequipa. He then says the 'multa' was not imposed on you individually, but upon the railroad enterprise which you represent, and that it was charged by you against the railroad in books which you have concealed, and that the sum was discounted by the railroad from the salaries of Peruvian railroad employees. Minister Alzamora concludes by * * * declining to admit your claim."

In conclusion, I am led to think that any delay in the presentation of your case was caused by you or your agents, who failed to place it in this legation until three years after the outrage.

Second. That this legation has given your case a thorough and exhaustive examination and seems to have made a decidedly forcible presentation of it to the Peruvian Government.

Third. That the Peruvian Government, after investigating it, positively refused to allow the claim, setting forth their reasons for such action.

Fourth. That the Department has not refused to give your case a hearing, but, on the contrary, it has investigated it thoroughly and instructed the minister here to demand an investigation and to press the matter forcibly and immediately upon the attention of the Government. It is not to be presumed that you are familiar with correspondence on the subject between the State Department and the legation, but I assure you that your case was received as all such cases are, in a friendly and impartial spirit, and orders were at once given to take it up.

Fifth. I do not find that the case is closed. From its first presentation by Mr. Thorndike, May 24, 1888, to Mr. Buck's letter to you, November 9, 1888, only six months or less had elapsed, during which time the records contain ample evidence of Mr. Buck's labors in numerous long documents to the Peruvian Government and to the Department about your case. I succeeded Mr. Buck on May 1, 1889, and since that date my attention has never been called to your case by you, your attorney, or your friends, or the Department until my visit to Mollendo.

I shall submit at once to the Department copies of my letters to you and your letter of the 23d ultimo, and ask for a statement of the present status of the case. I assure you, however, that you have no cause for ill feeling against this legation or the Department, as far as I am able to judge. Should the Department see fit to reopen the case, it is not too late, and I shall be glad to do anything properly in my power to bring about an intelligent and equitable settlement of the case.

Your obedient servant,

JOHN HICKS.

Mr. Hicks to Mr. Blaine.

No. 327.]

LEGATION OF THE UNITED STATES,
Lima, Peru, November 23, 1891. (Received December 15.)

SIR: Referring to my No. 310 of October 5, 1891, in regard to the claim against the Peruvian Government of V. H. MacCord, I now enclose a copy (1-327) of a letter received by the last mail from Mr. MacCord.

I have, etc.,

JOHN HICKS.

The above reference by Mr. Hicks to his No. 310 is found on page 27, Ex. Doc. No. 4, Fifty-third Congress, third session, and in the words following:

Mr. Hicks to Mr. Blaine.

No. 310.]

LEGATION OF THE UNITED STATES,
Lima, Peru, October 5, 1891. (Received October 27.)

SIR: When I was at Mollendo and Arequipa, in the south of Peru, I was told by friends of Mr. MacCord that his arrest and imprisonment in 1885 was an outrage upon American rights which had never been noticed by the Department, and that Mr. MacCord had sought in vain to have his case properly taken up by the the legation in Lima and our Government at home. Great ill feeling exists among Mr. MacCord's friends on the subject, and the indignation expressed against the legation and the United States Government was decidedly unpleasant.

I find, on investigating the matter, that it is almost entirely without foundation, and I have written to Mr. MacCord giving him a statement as it appears to me.

I would suggest that some statement from the Department, giving the reasons for not pressing the case, in such a manner as would convince Mr. MacCord that he has been fairly treated by the Department, might be a judicious step. I will say that I am of the impression that Mr. MacCord is a conscientious and honorable man and that he really feels that he has a grievance. Besides, the fact that he is and has been the manager of an important railroad and has a large circle of friends who sympathize with him, would seem to make it a case worthy of explanation.

On the other hand, should it be the judgment of the Department that the case should be reopened, I will cheerfully attend to it to the best of my ability.

Your obedient servant,

JOHN HICKS.

*Mr. MacCord to Mr. Hicks.**AREQUIPA, November 14, 1891.*

SIR: In reply to your esteemed favor dated 4th ultimo, I beg to say that, according to my information on the subject, the allegations contained in Minister Alzamora's note were denied by a subsequent note from Minister Buck, and the minister of foreign affairs was asked to substantiate his charges with proofs. Nothing short of this could be called an investigation, surely.

I furnished proofs in support of my charges, and all I have ever asked is that the matter should be investigated; but to accept as truth the unsupported statements of the Peruvian minister does not, in my humble opinion, constitute an investigation. This was, however, done in the question of the violation of the Mollendo consular agency, and it does not surprise me that it should be also accepted in my case.

Every allegation contained in Minister Alzamora's note, as transcribed by you, is false.

I was not in accord with the Iglesias commander. I did not leave rolling stock on the road without the prefect's knowledge and consent. I did not change the engine driver. I never pretended that it was not the railway who paid the money (in the end), but I claimed that I was tortured to compel the payment of it.

I did not conceal the books in which the transaction was recorded, nor was the money ever deducted from Peruvian employees.

Why was Mr. Alzamora not asked to prove these statements? I believe he was so asked, but never gave the matter any more attention; and the Government of the United States, for reasons best known to the Secretary of State, allowed the investigation to stop there.

I claimed (and I furnished unimpeachable proofs of the facts) that I had been illegally imprisoned and unlawfully and barbarously treated to compel the payment of money for war purposes, and which could not even be termed a fine, because a

fine presupposes an investigation of the facts in the case, which was denied me—or at least was not accorded, although it was promised to the deputation of the foreign consuls which waited upon the prefect for that purpose. My demand during the whole time of my imprisonment was to be placed on trial.

I claim, also, that no evidence has ever or can be produced to implicate me in any manner with the escape of the locomotives, and, further, that the prefect knew perfectly well that no blame could be attached to me. He himself has said so, and he himself told me in Mollendo, immediately after the Iglesias forces had left, that the money would be returned from the very first receipts of the Mollendo custom-house; that that money had saved the situation, etc.

You may possibly think (although I hope you do not) that because I was disposed to let the matter drop I had some fear that they might prove something against me; but such is not the case. I am aware that it has been insinuated that I had instructions from Mr. Thorndike to favor the Iglesias party, but such a charge is not worthy of nor does it receive a moment's consideration by anyone who knows the man; and as for myself I refer to a record of twenty years' residence in Peru to show if I have ever in any way interested myself in the political strifes so frequent in this country.

My position demanded of me the strictest neutrality, which I never failed to observe. As manager of the railway it was my duty to serve the constituted authorities of the party in power at the headquarters where I was stationed and I always did so honestly and to the best of my ability.

I know my duty as a law-abiding citizen, and I used to think I had a right to invoke the law in my own behalf and for my own protection.

If I was disposed to let the matter drop, it was because I found so much difficulty in prosecuting it, and because so much time had elapsed that a solution favorable to me now would probably not have the effect I expected and desired, *i. e.*, to aid in preventing such lawless proceedings in future.

Had the Peruvian Government not put it out of my power, by approving the prefect's action (without hearing me at all), I should have sought redress in the courts of the country and never pretended to a money indemnity. What I desired was the punishment of the authority who abused his power; but the Government by its action shut the door to this, and left me no other course to pursue than the one I adopted, or else keep silence.

You will remember that at the time of the perpetration of the outrages complained of I was the consular agent of the United States at Arequipa. The agency was afterwards changed to Mollendo, where it was violated by an armed force, and the matter was settled, it appears, by the minister of foreign affairs making an absurd and false statement as to the fact, which was accepted without proofs, notwithstanding my statement, with official proofs, to the contrary.

They claimed that they thought the consulate was in Arequipa, but they took down the coat of arms from over the door in Mollendo, and I had official notice from the prefect of the department of the change to Mollendo.

They say I used the coat of arms and the flag on my place of residence in Arequipa—things I had never done after the change. As a matter of fact, I never had the shield until the agency was changed to Mollendo. Nothing of this was taken into account, however, in the settlement of the question and I, quite naturally, I think, resigned the appointment in consequence.

Had the first outrage been properly dealt with I am satisfied the second would not have occurred.

I have nothing to add to my statements, with the proofs which are already on file in Washington, and my solicitor is there to answer questions or furnish more proofs if required.

My time is too much occupied here, and the matter seems fraught with too many difficulties for me to take much interest in it at this late date. I thank you, however, for having taken an interest in my behalf, and beg you to excuse the delay in replying, which was caused by excessive pressure of work.

I am, etc.,

V. H. MACCORD.

Mr. Hicks to Mr. MacCord.

UNITED STATES LEGATION,
Lima, November 28, 1891.

SIR: I have your valued favor of the 14th instant in regard to your claim against the Peruvian Government. Your letter has been forwarded to the Department at Washington as a part of the history of the case, and will no doubt be duly considered. A careful perusal on my part does not induce me to change the views expressed to you in my letter of October 4, 1891. Your several letters have expressed a censure upon this legation and the State Department for (1) delay and neglect in taking up

your claim, (2) improper consideration of the charges made by your assailants, and (3) unfair decisions against you.

1. I have already pointed out the fact that your claim was never presented to the legation or the State Department until nearly three years after the outrage, and that it was immediately taken up and vigorously pressed by the legation and the Department. It would seem, then, that the delay was partially, at least, your fault.

2. As you can not possibly know the action of the legation and the Department in the various letters, instructions, and decisions upon points in your case, I am at a loss to know how you can say the case was not investigated, or "nothing short of this could be called an investigation," or "to accept as truth the unsupported statement of the Peruvian minister does not, in my humble opinion, constitute an investigation."

3. As I have already stated, the case has not yet been closed, as far as I can learn. The final decision, therefore, is not against you.

From what I have been able to learn of the case, I believe you have been cruelly and inhumanly treated, and that your case ought to have been presented to the Peruvian Government by telegraph to the American minister the moment you were arrested, or, if that was impracticable, by special messenger. Such an outrage loses its point with every day that intervenes from the moment of its occurrence until the time when reparation is demanded. An outrage against one's personal liberty, like an assault upon a woman's honor, is practically condoned if no complaint is made until years have elapsed. Besides, there were peculiar circumstances connected with it, growing out of a condition of war, which might easily be turned against you, and make it difficult for a tribunal sitting 6,000 miles away to satisfy itself of your innocence.

So far as the occurrence known as the "Mollendo outrage" is concerned, I see no reason for mixing the two. Yours is bad enough, and must be considered by itself.

I am confident that your case has received at all times a hearing at the Department, and the main facts are known there. The ultimate and final decision of the case, I am quite sure, will be made upon legal and judicial lines and for reasons which will be found correct. If I can be of any service in the matter I shall gladly do all I can to help you. Should you ever again be threatened with any similar difficulty I hope you will not fail to notify me at once, and I am quite confident that you will have no cause to complain of want of action on my part.

Very truly, yours,

JOHN HICKS.

Mr. Hicks to Mr. MacCord.

No. 113.]

UNITED STATES LEGATION,
Lima, December 2, 1891.

SIR: By the last steamer I have received from the Department of State a reply to my dispatch of October 5, 1891, making a statement of your case and asking for an expression of the Department's views on the case. After the preliminary sentences, it says:

"The Department does not wish to volunteer explanations with reference to its action in cases of this character, although if it were addressed directly by Mr. MacCord it would, of course, make such reply to him as might seem proper under the circumstances. Your letter, however, to Mr. MacCord, of October 4, 1891, which he had not received at the date of your dispatch, ought to disabuse him of his wrongful impression. Mr. MacCord delayed for three years to present the matter to the legation for personal reasons affecting himself and his employer, and this delay on his part has been one of the grounds advanced by the Peruvian Government against the claim. It was presented to the legation May 24, 1888; the Department instructed the legation to present it to the Peruvian Government June 23 following, and Mr. Buck did so present it on the 6th of August of that year.

"Subsequently several notes passed between the legation and the Peruvian foreign office and the case was forcibly presented by the American minister. So far as the records of this Department disclose, Mr. Buck's note to the foreign office, November 14, 1888, has never been answered. Although the Peruvian Government had already twice refused to entertain the claim, the arguments advanced in this last note were entitled to consideration, and if the files of your legation confirm the fact that no reply has been received, you may call the matter to the attention of the foreign office and request such a reply."

In accordance with the foregoing instructions I have addressed a note to Dr. Elmore, minister of foreign affairs, and requested a reply to Mr. Buck's note above mentioned.

Should I hear anything in regard to the matter which may be of interest to you I will notify you.

Very truly, yours,

JOHN HICKS.

The "preliminary sentences" above referred to by Mr. Hicks as contained in Mr. Blaine's introduction to Mr. Hicks, and to which Mr. Hicks refers Mr. MacCord, are in words following, under date of November 6, 1891, from Washington:

SIR: I have received your dispatch No. 310 of October 5 relative to the claim of Mr. V. H. MacCord against the Government of Peru. You state that when you were at Arequipa Mr. MacCord and his friends claimed that he had not been able to obtain a hearing of his case in the Department or in the legation at Lima.

Such dispatch to Mr. Hicks was received by him in December, 1891, and MacCord advised of its reception by the foregoing note of December 2, 1891, and at the same time addressed the following note to the foreign office:

Mr. Hicks to Señor Elmore.

No. 67.]

LEGATION OF THE UNITED STATES,
Lima, December 2, 1891.

SIR: I beg leave most respectfully to call your excellency's attention to the following facts: On the 6th of August, 1888, the Honorable Charles W. Buck, United States minister, presented to your excellency's predecessor, at that time minister of exterior relations, the claim of Victor H. MacCord, of Arequipa, for damages growing out of his summary arrest and imprisonment and sentence of death.

The claim was the subject of numerous notes between the American minister and the minister of foreign affairs, but the last note of Mr. Buck, dated November 14, 1888, has never been answered.

I am instructed by the Department, under date of November 6, 1891, to respectfully request a reply to the note of Mr. Buck aforesaid.

Herewith I tender, etc.,

JOHN HICKS.

Mr. MacCord to Mr. Hicks.

AREQUIPA, *January 14, 1892.*

DEAR SIR: In reply to your esteemed favor of the 28th November and 2d of December, I beg to say that the paragraphs which you transcribe from the State Department's letter show that I was right in complaining that the investigation was dropped when the Peruvian Government failed to reply to Mr. Buck's note of November 14, 1888. This is precisely what I complained of, and what induced me to say that the investigation had not been complete; and even if the case was delayed in presentation, that does not justify its being dropped simply because the minister of foreign affairs declined or neglected to answer Mr. Buck's note.

If the case was delayed in presentation, it was not my fault. My protest was made immediately I got out of prison, and sent on to Lima. But, be that as it may, I wish you to note that I am not anxious to have the case reopened. Had I so desired I should certainly have spoken to you about it here. The documents were shown you by Mr. Griffith in Mollendo without my knowledge or consent, and that is what has led to all our correspondence on the subject. I am heartily tired of the whole affair, and, as I have previously intimated to you, a solution in my favor would now work me more harm than good.

I beg you, therefore, to give yourself no more trouble about it, and to accept my thanks for the interest you have taken in my behalf.

I remain, dear sir, very truly,

V. H. MACCORD.

Mr. Hicks to Mr. Foster.

No. 472.]

LEGATION OF THE UNITED STATES,
Lima, Peru, February 18, 1893. (Received March 11.)

SIR: Referring to my dispatches Nos. 310, October 10, 1891, and 342, February 8, 1892, in regard to the claim of Mr. Victor H. MacCord, an American citizen, against the Government of Peru, I have the honor herewith to transmit the reply of the foreign office to my note of December 2, 1891. As this note was not immediately answered, I called the attention of the foreign office by note twice afterwards, and

personally I brought it to the attention of the minister on several occasions, not less than six, but until now I have not been able to get a reply.

As Department no doubt expected, the rejoinder of the foreign office is a flat denial of the justice of Mr. MacCord's claim, and a statement of facts which, if true, places the claimant in the wrong and justifies the position taken by the Government.

I submit the letter with its accompanying documents and await the instructions of the Department.

I would suggest that I be instructed to furnish the claimant with a copy of the letter and affidavits, if the Department sees fit.

Your obedient servant,

JOHN HICKS.

INCLOSURES REFERRED TO ABOVE.

[Inclosure 1 in 472.—Translation.]

Dr. Ribeyro to Mr. Hicks.

PERUVIAN FOREIGN OFFICE,
Lima, February 15, 1893.

MR. MINISTER: I have duly received your excellency's note of December 2, 1891, in which my attention has been called to the claim of your predecessor, the Hon. Charles W. Buck, presented to this ministry for damages to Mr. Victor H. MacCord, of Arequipa, proceeding from the imprisonment which he suffered by order of the prefect of that department, Colonel San Roman, in the month of June, 1885. Your excellency states that the note of your legation of November 14, 1888, has not been answered, and that you have instruction from the Department of State to request a reply.

Having examined the antecedents of the case I find that the Hon. Mr. Buck on presenting this claim did not take into consideration the special circumstances which influenced the conduct of Colonel San Roman, and in the opinion of this Government it exonerates it from all responsibility.

In the month of June, 1885, an expedition left Lima against the Government of General Caceres, who was represented in Arequipa by the said Colonel San Roman. This officer at once took the necessary measures which he was obliged to do in his character of military chief of the department, and one of them was, that the superintendent of the railroad at Mollendo remove all the rolling stock to the city.

Notwithstanding, the superintendent left at Mollendo a number of freight and other cars sufficient for the transportation of the forces of the enemy, thus showing his partiality.

This was the beginning of the execution of a plan originated in Lima, which was afterwards proved, by virtue of which the superintendent was to furnish to the government of General Yglesias locomotives and cars necessary for transportation, thus placing the company in a position of real and open hostility against Colonel San Roman, and subjecting his representatives to the consequences of these proceedings so treacherously carried out.

In fact, on the 13th of June the engine "Vitar" was sent from Arequipa with a convoy and a detachment of exploration, the conductor, Mackenzie, taking advantage of the moment that the troops left the cars, put on steam and went to join the enemy's troops that were already at Mollendo. Thus the latter possessed the means of transportation that they were wanting, and in a few days' time they arrive outside of Arequipa, where they fought several battles. That the flight of the locomotive was not the work of Mackenzie alone is proven by the fact that this person was not the ordinary conductor, that he had been placed in charge on the morning of the day when the event occurred.

Thus was proven the manifest complicity of the railroad company represented in Lima by Mr. John L. Thorndyke, who was in accord with General Yglesias, and in Arequipa by Mr. Victor MacCord, who opportunely received a telegram from his chief advising him to deliver up the cars. The prefect of Arequipa exacted a fine of 10,000 soles. He had power to exact this fine and even a more serious one against those who were hostile to him and compromising the interests of the Government he served.

But MacCord resisted payment, and it was necessary as regards him to take the necessary precautions to put a stop to his conspiring in favor of the enemy and to prevent the military authorities' prestige from suffering, so necessary at the critical moment of an attack against the city.

If the prefect employed harshness it was perfectly excusable, for nobody would

have done otherwise in so difficult and dangerous a situation for this authority and on behalf of the national cause he defended.

MacCord has pretended to have paid the fine out of his private funds. This is contradicted by the company's books, where it appears debited to the working of the line under the name of "difference in exchange." This sum was also compensated by a reduction that the railway company imposed upon the employees for this purpose in October, 1885. Therefore it is seen that this is not a case for the application of the principles invoked by the Hon. Mr. Buck, which this ministry does not pretend to examine, for the protection due to foreigners ceases when they take part in civil contests. The Peruvian Government deplores the occurrence of acts in which the prefect of Arequipa interfered, with no other object but to save the situation created by the railway company and its representatives. But at the same time it considers that the prefect's conduct was justifiable under the circumstances, and the carrying out of such duty was the only course he could pursue.

I inclose for your excellency the reports existing at this ministry which will prove the truth of the railway company's interference in the military operations of Col. San Roman.

Reiterating to your excellency upon this occasion the sentiments of my high and distinguished consideration,

R. RIBEYRO.

[Inclosure 2 in No. 472.—Translation.]

Certificate.

I, Lantaro E. Cantuarias, superintending auditor of the Southern Railways, do hereby certify—

That the books of the Thorndyke administration were removed on the night of May 6 last, by order of Mr. Teodoro Harusem, who, under the pretense of making some entries in the said books previous to delivering them up, retained possession of them, but offering to place them at the disposal of the present auditors, which, up to date, he has not done. Thus the undersigned is under the necessity of stating that, for want of the said books, it is not possible for him to name the page on which the item of 10,000 sols paid by the railway company to the prefecture of this department in June, 1885, is entered, but from reliable information received from trustworthy employees, he has ascertained that the said sum has been debited to the working of the lines under the heading "Difference in exchange."

It is of public notoriety that the Thorndyke administration claimed the return of the said sum from the Supreme Government, and, on not obtaining it, in October, 1885, they deducted 25 per cent from those of the employees whose salaries exceeded 100 sols, and 20 per cent from those whose salaries did not exceed 100 sols, in order by this means to escape the payment referred to.

In proof of this I hereby sign my name. Done at Arequipa this 16th day of October, 1888.

L. E. CANTUARIAS,
Superintendent of the Arequipa, Puno, and Cuzco Railways.

The undersigned, notaries of this capital, certify that the preceding signature is that of Mr. Lantaro Cantuarias, at present superintendent of the Arequipa, etc., railroads.

Done at Arequipa this 16th day of October, 1888.

ABEL T. CAMPOS.
MARIANO A. CARRERA.
BENIGNO L. FERNANDEZ.

Attest:

CARLOS WIESSE,
Chief Clerk, Peruvian Foreign Office.

[Inclosure 3 in No. 472.—Translation.]

(Certificate.)

I, Baltazar H. Morales, attorney of the tribunals of the Republic and secretary of the prefecture of the department.

I certify: That an order exists in the official copy book of this office as follows:

PREFECTURE, Arequipa, June 5, 1885.

SUPERINTENDENT OF THE RAILWAYS:

I am pleased to inform you of the following dispositions, the carrying out of which with the most scrupulous exactness will devolve upon the company, without excuse, and under the most serious responsibility. (1) The escort that leaves this city

to-morrow for Mollendo shall return to Arequipa on Saturday night, or, at the latest, on Sunday morning, if it is so desired by the subprefect of Islay. (2) In the latter case the locomotive is to have steam up and be ready to depart on the instant of receiving orders at Mollendo. (3) The said train shall bring along with it all the rolling stock existing at Mollendo and intermediate stations, which is to be deposited at Arequipa. (4) There shall remain but one locomotive at Mollendo at the disposal of the subprefect of Islay, with steam up, and ready to leave on the instant of receiving orders. (5) No kind of rolling stock shall remain at Mollendo and intermediate stations from Sunday next.

I hope the company you so worthily represent will carry out these orders. God have you in His holy keeping.

MANUEL SAN ROMAN.

AREQUIPA, October 18, 1891.

B. H. MORALES.

Approved:

SAN ROMAN.

Attest:

CARLOS WIESSE.

Chief Clerk of the Peruvian Foreign Office.

[Inclosure 4 in No. 474—Translation.]

Certificate.

Baltazar H. Morales, attorney of the tribunals of the Republic and secretary of the prefecture of the department.

I certify that a resolution exists among the archives under my care as follows:

“REPUBLIC OF PERU,
“THE SEAL OF THE PREFECTURE OF THE DEPARTMENT,
Arequipa, June 14, 1885.

“Whereas the engine driver, Mr. N. Mackenzie, in charge of the locomotive ‘Vitar,’ conveying a force under the command of Sergt. Maj. Mr. Emique Valderz, took advantage of the moment at which the troops and their commander left the cars in which they traveled, taking them by surprise, fled hastily from the ‘Vitar’ station with the said locomotive, which he placed at the disposal of Col. D. Vidal Garcia y Garcia, chief of the forces sent against this place by Mr. Miguel Iglesias;

“Whereas an act of this character affords to the enemy’s division the facility of removing to Arequipa, thus crossing the 30 leagues of desert that separate it from Mollendo without difficulty, very seriously affecting the success of the constitutional arms; and as the immediate consequence, the definite result of the operations the chief of state is engaged in carrying out with his forces, and finally the cause of law, and of the constitution. And furthermore, the railroad company has left at the Mollendo and intermediate stations sufficient rolling stock for the transportation of the said troops of Col. Garcia y Garcia, in defiance of the orders forwarded from this office in the note of the 5th instant, and in virtue of which he should have removed all that stock to the Arequipa station on the 7th instant, under the most serious responsibility;

“Whereas, on examining into the cause of the acts referred to, which have the appearance of true rebellion against the Government and legitimate authorities established in the department, it has come to light that it is no other than the clandestine agreement celebrated between the company and the government of Mr. Miguel Iglesias;

“Whereas the superintendent of the railways, Mr. Jose Manuel Braun, has exhibited a telegraphic dispatch at this office, forwarded to him by Col. Garcia y Garcia from Mollendo, stating “that by agreement celebrated in Lima between Mr. John Thorndyke and Mr. Miguel Iglesias, his minister of war, and Colonel Garcia, the company were under the obligation to furnish them with all the railway stock their expedition required within twenty-four hours of its landing at Mollendo; whereas the delinquency of the said company being thus clearly proved, it is necessary to punish it in a manner convenient and adequate to the delicate circumstances of the case, and to this effect the prefecture is invested by the supreme government with ample and extraordinary powers; it has therefore been resolved:

“(1) To impose upon the Southern Railway Company a fine of 10,000 sols.

“(2) That the manner of making the said fine effective shall be arranged with the legal representative, Mr. Victor MacCord.

"For the carrying into effect of these resolutions let the treasury and the subprefecture of the district be informed of the same; report to the Supreme Government and place amongst the archives."

AREQUIPA, *October 18, 1891.*

Approved:

Attest:

SAN ROMAN.

B. H. MORALES.

SAN ROMAN.

CARLOS WIESSE,
Chief Clerk of the Peruvian Foreign Office.

[Inclosure 5 in No. 472.]

Mr. Hicks to Doctor Ribeyro.

No. 132.]

LEGATION OF THE UNITED STATES,
Lima, February 18, 1893.

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's note of the 15th instant, in regard to the claim of Victor H. MacCord, an American citizen, with the accompanying affidavits on the subject.

Please accept my thanks for the note, which seems to be ably drawn up.

I will submit the note, with its accompanying documents, to the Department of State, and await its further instructions.

I have, etc.,

JOHN HICKS.

[Inclosure 6 in No. 472.]

Mr. Hicks to Mr. MacCord.

No. 195.]

LEGATION OF THE UNITED STATES,
Lima, February 18, 1893.

SIR: I have the honor to inform you that I have just received from the Peruvian foreign office a reply, dated February 15, 1893, to my note of December 2, 1891, in regard to your claim. I may say in addition that since my note was written I have repeatedly called the attention of the foreign office to the matter, but until now no answer has been forthcoming.

The letter was accompanied by a number of affidavits apparently substantiating the statements it contained, and the whole has been transmitted to the Department of State for instructions. I have asked permission of the Department to send you a copy of the letter and affidavits, and if Department consents I will send it to you at once.

I have the honor to be, sir, etc.,

JOHN HICKS.

Late in the winter of 1892 access to the State Department was sought by a neighbor of Mr. MacCord's family in Pennsylvania, Rev. H. D. Lowing, in company with his then Member of Congress and a Member of Congress elect to the Fifty-third Congress, when it was then learned that without any instruction from the State Department, or authority whatever, Mr. Hicks, United States minister to Peru, while on a visit to southern Peru, after leaving Arequipa, and while at Molendo, on the coast, opened a personal correspondence with Mr. MacCord at Arequipa, under date of September 17, 1891, concerning his claim, which Mr. MacCord replied to, and which was followed by a second from Lima by Mr. Hicks, October 4, another November 28, and one December 2. That of November 28, was not replied to by Mr. MacCord until the receipt of that from Mr. Hicks of December 2, and then both answered by Mr. MacCord January 14, 1892, all of which are found in Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 28 to 32, inclusive. Everyone of Mr. MacCord's letters teems with complaints of the failure of his Government to follow up the demands

contained in Mr. Buck's dispatch of November 14, 1888, and each of Mr. Hicks's letters distorts the records of the State Department and the legation, except his first from Mollendo, in which he was fully "impressed with the enormity of the outrage."

The excursion by Mr. Hicks from his legation at Lima into Mr. MacCord's immediate vicinity, several days' travel distant, and there opening a correspondence touching a matter to which his attention had neither been called by his Government or invited by MacCord, is not easily accounted for upon any recognized regulation or principle of diplomacy. But surprise in the premises will cease by a perusal of the dispatch of Mr. Hicks to Mr. Foster, under date of February 18, 1893 (Ex. Doc. No. 18, Fifty-third Congress, third session, p. 6), in which he virtually not only becomes the accuser of Mr. MacCord, but the apologist and justifier of Peru, and his note to Dr. Ribegro, as follows:

No. 132.]

LEGATION OF THE UNITED STATES,

Lima, February 18, 1893.

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's note of the 15th instant, in regard to the claim of Victor H. MacCord, an American citizen, with the accompanying affidavits on the subject.

Please accept my thanks for the note, which seems to be ably drawn up.

I will submit the note, with its accompanying documents, to the Department of State, and await its further instructions.

I have, etc.,

JOHN HICKS.

Soon after Secretary Gresham became Secretary of State the attorney of Mr. MacCord asked for the examination and consideration of the claim, which was promised as early as the business of the Department would permit; at the same time he suggested that Mr. MacCord's letter of January 14, 1892, although personal, should be withdrawn, such request being based upon the following letter, addressed to Secretary Gresham:

WASHINGTON, August 31, 1893.

Hon. W. Q. GRESHAM, *Secretary of State.*

SIR: In the summer of 1888, as the solicitor of Victor H. MacCord, I prepared and filed, under the direction of the late Dr. Wharton, at that time the solicitor of the State Department, a memorial setting forth a series of barbarous and brutal treatment by Peruvians in Southern Peru, at Arequipa and Mollendo, and while MacCord was the accredited consular agent of the United States in Peru; prepared through Mr. MacCord an abundance of evidence of the highest character in Peru, every allegation set forth in such memorial asking reparation in damages for indignities to his person, involving his arrest, imprisonment, almost starvation for days and nights, at one time marched out by a bevy of soldiers at midnight under an order to be shot, and only released from prison by the citizens of the city of Arequipa raising and paying his oppressors the sum of \$10,000, thereby purchasing his freedom, such arrest and imprisonment being without cause or provocation upon Mr. MacCord's part.

That such claim was promptly and vigorously prosecuted by United States Minister Buck under instructions from Secretary Bayard, the discussion having been closed by an exhaustive review of the case in Mr. MacCord's favor, by Minister Buck, and forwarded to his Government shortly before his resignation and recall early in 1889, and to which no reply was attempted by the Peruvian Government for nearly four years after, and which consisted in nothing but a rehash of allegations made to Minister Buck's demand in 1888 for indemnity, and to which Minister Buck had triumphantly replied.

That immediately after the confirmation of Mr. Hicks as the successor of Minister Buck, I, by the politeness of Senator Sawyer, obtained an interview with Mr. Hicks in Senator Sawyer's committee room at the Capitol, and explained fully and at great length to Mr. Hicks the claim of Mr. MacCord and its enormity, whereupon he promised to do everything in his power, both personally and officially, in the prosecution of the claim.

That leaving Mr. Hicks, I called upon Mr. Walker Blaine, who was in charge or on duty at the solicitor's department of the State Department, and after a full and careful examination of the papers on file, including Minister Buck's exhaustive reply to the foreign office's allegation in attempting to answer the demand made by Mr. MacCord's Government, Mr. Walker Blaine agreed to advise me by telegraph at

my home in Meadville when Mr. Hicks arrived at the State Department preparatory to his departure, in order that an agreement could be entered into as to the special instruction Mr. Hicks should receive touching the adjustment of the claim.

That upon my return to Meadville I wrote Mr. Hicks at Oshkosh, and requested him to be kind enough to advise me a few days before he would leave for Washington, in order to arrange my matters to meet him in Washington promptly.

That after a month or more I noticed by a New York paper that he had sailed the day before for South America, and at once came to Washington and asked Mr. Walker Blaine for an explanation, and was by him told that Mr. Hicks could remain but a day, and that he knew that I could not get there in time if advised by telegraph.

That I found upon inquiry that Mr. Hicks was here in Washington several days before leaving for Peru; that after arriving in Lima, Mr. Hicks, in reply to a letter from me upon the subject, again promised to do everything in his power looking to Mr. MacCord's relief.

That in December, 1889, failing in persistent efforts to see Secretary Blaine in the matter, I laid the whole case before President Harrison, who promised action by the State Department.

That after waiting until September, 1891, I reminded the President of the correspondence with him of December, 1889, when he by letter to me again promised action.

That about that time Mr. Hicks appears in Arequipa, the headquarters of Mr. MacCord, and after remaining there some days returned to his legation at Lima, stopping at Mollendo a few days, writes Mr. MacCord expressing surprise at his not having spoken to him (Hicks) while at Arequipa, adding that he (MacCord) had been shamefully treated by the authorities in Arequipa, and that the matter ought to be pushed.

That exasperated by the delay of the State Department after Mr. Hicks's appointment and a knowledge of the fact of Mr. Blaine's refusal to see me in the case—four long years—Mr. MacCord wrote Mr. Hicks in reply that if he had wished to take further action he should have spoken to him (Hicks) while in Arequipa.

That upon Mr. Hicks's return to Lima he wrote Mr. MacCord again, saying he had looked the matter up in the records of the legation, and pretended that he had never heard of it before, and then gave what he called a complete record of the several notes which had passed between the legation and the Government on the subject, but left out the last note of Mr. Buck's that had not been answered, and added that the record of the legation showed that the Washington Government had given the case very careful consideration, and that he (MacCord) had no reason to complain, unless that it might be for delay, and that at least was partly his (MacCord's) fault.

That in one of Mr. Hicks's letters, dated October 4, 1891, he stated to MacCord that he "succeeded Mr. Buck in May, 1889, and since that date my attention has never been called to your case by you, your attorney, or your friends, or the Department, until my visit to Mollendo."

That the letter to Mr. Hicks by MacCord which expressed a desire of not prosecuting the case further was a personal letter and not intended for the use Mr. Hicks made of it, and for that reason I ask that this case be now examined upon its merits, and, if possible, the inaction of Mr. MacCord's Government for the last four years accounted for.

All of which is most respectfully submitted.

S. NEWTON PETTIS,
Solicitor for V. H. MacCord.

(See Ex. Doc. No. 18, Fifty-third Congress, third session, pp. 10, 11, 12.)

Mr. MacCord to Mr. Pettis.

VALPARAISO, May 24, 1893.

MY DEAR MR. PETTIS: Your two favors of April 11 were received here to-day, and I hasten to reply at once, fearing you may find the delay longer than you expected on account of the forwarding.

I left Arequipa some two months ago for a trip through Bolivia, down the river Desaguadero, and through Chile. I had intended visiting the United States this year, but as I could not do both I have preferred this as the most convenient from a financial point of view.

With reference to the letter you speak of, I will say by way of explanation that it was intended for Mr. Hicks personally rather than as an official document, to be made use of as he has done. You are aware of the manner in which Mr. Hicks behaved in regard to my

claim before he left the United States, and will readily comprehend why I thought it useless to treat with him in reference to it here. In fact, I felt so incensed with him that I could scarcely bring myself to treat him with common civility, much less to consult with him on the subject of my claim, and it was only after he left Arequipa that he wrote to me saying that he thought I had been shamefully treated by the authorities in Arequipa, and that the matter ought to be pushed.

I replied that it was now too late; that a result, even in my favor, could not at this late date serve the purpose which I had in view when the claim was made (that of punishing the party who committed the outrage), and I could not help adding that had I wished him to take the matter up I should have spoken to him about it when in Arequipa. This was while he was still at Mollendo. After reaching Lima, Mr. Hicks wrote me again, saying he looked the matter up in the records of the legation, and pretended that he had never heard of it before his visit to Arequipa, which you know is not true. He proceeded to give me what he said was a complete record of the several notes which had passed between the legation and the Government on the subject, but left out the last note of Mr. Buck's, which had not been answered. I wrote in reply, expressing my surprise at this omission, and insinuated that I thought it useless for him to trouble himself in the matter, as the Government at Washington did not seem inclined to take up the question. He replied that by the record of the legation it appeared the Washington Government had given the matter very careful consideration, and that I had no cause to complain, unless that it might be of delay, and that, at least, was partly my own fault.

He said the Peruvian Government accused me of having been in connivance with the Iglesias party. I replied that I could not feel satisfied with an investigation that would accept an unsupported allegation of that nature as against such proof of illegal and brutal treatment as I had furnished, and which were on file at Washington; and I again requested him not to trouble himself about the case, as it was evident that the Government at home did not wish to do anything with it, as my attorney there had not been able to even have it read by Mr. Blaine; and when he complained to the President he was simply referred back to Blaine. I added that I was not disposed to make myself obnoxious throughout the country by insisting in stirring up an old question when I was quite convinced that my Government would never carry it through; that I would be certain to suffer in my business interests by persisting in the claim, and I preferred to let it drop; you can understand this, knowing the people. I should be harassed in many ways and pointed out on the street as an enemy of Peru, where I have now considerable interest owing, in a great measure, to the dislike I took at my own country when no redress was to be had for repeated outrages.

You will doubtless remember the consulate question in Mollendo which caused me to resign the appointment; that was in fact a violation of the consulate perpetrated by the authorities themselves, and premeditated, but nothing was done about it. The statement of the Government that they did not know it was the consulate was accepted as sufficient excuse and explanation, when they had taken down the shield from over the door.

I could have furnished the proof, if more was required, of their knowing it was the consulate, but I was not asked. The false statement of the prefect that he thought the consulate was in Arequipa was accepted as sufficient explanation, and the inference was naturally that I must be incompetent. Is it any wonder that I resigned; could any one with a particle of self-respect have done otherwise? I think not; and if I have since then sometimes spoken harshly and disrespectfully of my country, or at least of its ruler, it must be conceded that I had some cause for so doing.

This last case of so-called violation of the consulate at Mollendo, and to which you refer, was not a violation of the consulate at all. What happened was that the temporary "acting consulate agent" (a German citizen) had removed the books, blanks, etc., to his own office for more convenience in attending to the work, and the door of his office was broken in during a street riot. The consular shield and flag had never been removed there, and consequently it could not have been known or recognized as a consulate. This was still at the old place and was not touched. How, then, could Mr. Hicks report that the consulate had been violated?

If Peru has been made to apologize or pay for this pretended violation, it is a gross injustice.

Just before I left Peru I received the inclose note from Mr. Hicks, No. 190, February 20, 1893, to which I have not replied nor do I intend to. The matter is in your hands, and if, in view of what I have said, you think it convenient to try to push it to a conclusion, I shall not object; but I am afraid it will cause me more trouble and annoyance than any good I can get out of it.

Yours truly,

V. H. MACCORD.

Hon. S. NEWTON PETTIS, *Meadville, Pa.*

(See Ex. Doc. No. 18, Fifty-third Congress, third session, pp. 12, 13.)

Mr. Pettis to Mr. Gresham, inclosing letter from MacCord to Mr. Gresham:

Mr. Pettis to Mr. Gresham.

WASHINGTON, November 28, 1893.

SIR: I have the honor to inclose herewith a letter received from Victor H. MacCord, sojourning at Arequipa, Peru, South America, which speaks for itself in connection with his claim against the Government of Peru.

I am, etc.,

S. NEWTON PETTIS.

(See Ex. Doc. No. 18, Fifty-third Congress, third session, p. 15.)

Mr. MacCord to Mr. Gresham.

AREQUIPA, PERU, October 29, 1893. (Received November 27.)

SIR: It gives me great pleasure to learn through my solicitor, Judge Pettis, of Meadville, Pa., that you are disposed to accede to his request in my interest by resuming the consideration of a claim made by him in my behalf against the Government of Peru in 1888, and which was efficiently prosecuted by the United States during the time Secretary Bayard continued in office; but for some reason Mr. Blaine steadily refused during his term to prosecute the claim, notwithstanding the constant and persistent efforts of my solicitor to that effect.

Your action in the premises, looking to the righting of a grievous wrong, will be thoroughly appreciated in this country, not only by North Americans, but by all foreigners and right-minded Peruvians as well.

The good name of our Government has undoubtedly suffered here by reason of its apathy—to put it as mildly as possible—in this case. Although I had been assured by my Government in 1888 that the evidence I had furnished was sufficient, I stated to Minister Hicks, in a personal letter to him dated November 14, 1891, that my solicitor was at Washington, where my proofs were filed, and would answer any questions, or furnish further proofs if necessary.

With thanks for the good will you have manifested in the matter, I am, etc.,

V. H. MACCORD.

(See Ex. Doc. No. 18, Fifty-third Congress, third session, p. 16.)

After the receipt of the above letter from MacCord, Acting Secretary Uhl addressed Minister McKenzie, at Lima, upon the subject of Mr. MacCord's letter of January 14, 1892, as will be seen below:

Mr. Uhl to Mr. McKenzie.

No. 48.]

DEPARTMENT OF STATE,
Washington, December 29, 1893.

SIR: Adverting to your predecessor's dispatch No. 472, of February 18, 1893, concerning the claim of Victor H. MacCord against the Government of Peru, you are requested to make a thorough examination of this claim as it appears on the files of your legation and report the result to this Department.

It is desired that you will also ascertain, if practicable, what is thought of the merits of the claim by disinterested parties residing in the country and having knowledge of its origin and circumstances.

You will notice that Mr. Hicks, in his dispatch No. 342, of February 9, 1892, forwarded to the Department a copy of a letter from MacCord in which the latter requested that no further action should be taken in relation to his claim, as a solution in his favor would work him more harm than good. You will endeavor to ascertain whether the contents of this letter, or the attitude of Mr. MacCord with respect to his claim, was ever brought to the attention of the Peruvian Government.

In doing this you will carefully avoid giving to that Government any information concerning the letter referred to, but will confine yourself to ascertaining by casual reference to the case in conversation with the minister of foreign affairs, or by such other means as you may find practicable, whether MacCord's position with reference to the claim, as stated in that letter, ever came to the knowledge of the Peruvian authorities.

I am, etc.,

EDWIN F. UHL,
Acting Secretary.

JAMES A. MCKENZIE, Esq., etc.

(See Ex. Doc. No. 18, Fifty-third Congress, third session, p. 16.)

Mr. McKenzie to Mr. Gresham.

No. 82.]

UNITED STATES LEGATION,
Lima, Peru, January 27, 1894. (Received February 23.)

SIR: I have the honor to acknowledge receipt of Department's No. 48 of December 29, 1893, in relation to the claim of Victor H. MacCord v. The Republic of Peru.

According to the Department's instructions, I have made a thorough examination of the case as it appears of record on the files of this legation, and I am satisfied the Peruvian foreign office regards the whole matter as having been definitely closed, as per its note to this legation from the then minister from foreign relations, Señor Dr. Don Ramon Ribeyro, under date of February 15, 1893, and duly forwarded to the Department in Mr. Hicks's No. 472 of February 18, 1893.

Mr. Neill, the secretary of this legation, at my suggestion, had a guarded interview with Señor Dr. Don Carlos Wiese, the chief clerk of the foreign office here, and ascertained that no correspondence had been received there from Mr. MacCord on the subject of his claim, and that they had no knowledge of his letter from Arequipa, dated January 14, 1892, in which he distinctly withdrew his claim, etc., but that the foreign office regarded the matter as no longer constituting a diplomatic claim.

Mr. John L. Thorndike, a friend of Mr. MacCord, now residing in Lima, informs the legation that he had a conversation with Mr. MacCord within the month last past, in Arequipa, and in discussing the claim Mr. MacCord told him he did not desire the case reopened, and that if it was reopened it would not be done by his advice or with his consent.

I have the honor, etc.,

J. A. MCKENZIE.

The report of the committee is made more voluminous than would have been necessary had the confusion in the arrangement of dates been avoided in the printing of the "papers and correspondence" sent to the Senate by the State Department, and which the committee have in their report arranged chronologically, and from which it is easily ascertained.

The committee report:

That the claimant, Victor H. MacCord, of Linesville, in the county of Crawford and State of Pennsylvania, and a citizen of the United States, while lawfully engaged in the discharge of his duties as acting superintendent of the Arequipa, Puno and Cuzco Railroad in June, 1885, and at the time a consular agent of the United States in Peru, was, without cause or provocation on his part, arrested by order of Manuel San Roman, prefect of the city of Arequipa, Peru, appointed by General Caceres, who had recently proclaimed himself as the head of a Constitutional Government for Peru, and on the 12th day of June, 1885, imprisoned in the San Francisco Barracks, at Arequipa, Peru, where he received the following order:

PREFECTURE OF THE DEPARTMENT, *June 12, 1885.*

MR. MACCORD,

Superintendent of the Railroads.

You will direct by telegraph all orders of the case, in order that the rail line between Cachendo and La Joya remain completely unused.

You will have for that fulfillment until to-morrow very early, in order that this order be terminantly complied with. As to that, you being in the power of the authority which has to comply with his duty in these circumstances, the mere fact of the fugitive engine passing from La Joya in the direction of this city will place me in the case of shooting you without the least delay, since you alone are responsible for what may happen.

God guard you.

MAN'L SAN ROMAN.

[Indorsement—Translation.]

MR. A. TAMAYO, *Present.*

Be pleased to dictate the measures most efficient in order to comply with the order above indicated of the señor prefect.

V. H. MACCORD,

Cuartel of San Francisco (date as above).

CERTIFICATE.

These are to certify the above-written signatures of Man'l San Roman, prefect of the department of Arequipa, under the then Government of General Caceres, to be of his true and proper handwriting, the present document having been handed me to keep under date the 12th day of the month of the month of June, 1885.

British vice-consulate, Arequipa, Peru, this 22d day of the month of October, 1888.
[SEAL] ALEX. HARTLEY, *British Vice-Consul.*

That some time after the receipt of the above order an officer came to his cell and advised him to arrange his affairs, as there was an order to shoot him within an hour, and that within half an hour afterwards he was marched out to the parade grounds and stood up before a file of soldiers armed with rifles and asked if he wished to say anything, as he was to be shot, when he replied that he had committed no crime and had nothing to say; whereupon, after consultation among three or four officers, one remarked that it was not good to kill a man, he was then led back to his cell.

That on the 13th day of June, 1885, he was notified that by order of the prefect he must pay a fine of 10,000 soles for the escape of an engine, and that it must be paid at once or extreme measures would be taken against his person to compel payment.

That MacCord answered, denying the right to impose a fine implying culpability, without even a semblance of an investigation, and demanded a trial, if there was a charge of any kind against him, which was refused.

That upon the following day, June 14, notice was verbally given as coming from the prefect that unless the 10,000 soles were paid before 3 o'clock in the afternoon the "extreme measures" threatened would be applied and the fine increased to 15,000 soles, and if delayed longer to 20,000 soles, when reply was made by MacCord, reiterating his demand for a trial, and protesting against the illegality of the fine and his arrest and confinement.

That on the morning of the 15th of June word was brought to his cell that by order of the prefect MacCord should not be allowed either food or water, and that every article of furniture be removed from his cell, which order was at once carried out, his cell being damp, with a brick floor, and he compelled to stand, as everything, even to a rough stone, which might have served as a seat, was taken away; when the commercial houses of the city of Arequipa, doubtless realizing that MacCord could not long survive such inhuman treatment, raised and paid the 10,000 soles, and he was, late in the afternoon, allowed his liberty. The first use made of his pardon was to protest against the barbarity to which he had been subjected, which protest, hereinbefore set out in this report and printed upon pages 10, 11, and 12 of Ex. Doc. No. 4, Fifty-third Congress, third session, concludes as follows:

It appearing by the foregoing deposition that the laws of the country have been defiantly infringed by an authority who, not being a judge, imposes fines and executes punishments arbitrarily and in violation of the laws, and by keeping a prisoner over the time allowed by law without submitting him to the proper tribunal for trial, and subjecting him to barbarous and inhuman treatment whilst so detained, I, Victor H. MacCord, do make this my formal protest against the arbitrary and abusive proceeding of the aforesaid prefect of Arequipa, Colonel Don Manuel San Roman, and do declare that the ten thousand soles, in silver coin, were paid under pressure of violence and reserving the right to make claim to a higher authority, and to the tribunals of justice of the country, and to appeal to diplomatic ways, if necessary in defence of my own personal rights and in protection of the interests confided to my care.

Let it be put on record that the first use made of my liberty is to enter this protest at the British vice-consulate, this sixteenth day of June, one thousand eight hundred and eighty-five.

V. H. MACCORD.

Thus protested and declared in due form of law at Arequipa aforesaid, the day, month, and year first before written.

[SEAL]

ALEX. HARTLEY,
Acting British Vice-Consul.

That such protest was subsequently verified, in support of MacCord's memorial addressed to Secretary Bayard, by his solicitor, in August, 1888, as found on pages 2, 3, and 4 of Ex. Doc. No. 18, Fifty-third Congress, third session, by the following certificate:

Those who subscribed, natives and strangers, resident in this city during the month of June, 1885, having been well acquainted with the terms of the protest which preceded, made by Mr. MacCord, superintendent of the railroads of Mollendo to Puño and Cuzco, before Mr. Alex. Hartley, vice-consul of Her Britannic Majesty in Arequipa, being animated by a lively sentiment of the strictest justice, consider it due him to declare, as in effect they do declare, that those things which it evidences, having been in this locality, of public notoriety, absolutely conform with the truth of what occurred, all and each of the facts which are found set forth in the said protest.

Which, with the respective signatures they desire to authenticate, for the ends which Mr. MacCord, the author of the aforesaid documents, may consider proper.

Arequipa.

C. WAGNER, [L. S.]
Consul of the German Empire.
EMILIO PETERSEN, [L. S.]
Consul of the Netherlands.
GMO. MORRISON, [L. S.]
Vice-Consul, Argentino.
JOSÉ V. RIVERA, [L. S.]
Vice-Consul of Portugal.
JOSÉ EGUREN, [L. S.]
Vice-Consul of Spain.
GUILLERMO RICKETTS, [L. S.]
G. HARMSSEN, [L. S.]
Consul of Austria-Hungary.
P. GUINASSI, [L. S.]
Consular Agent of Italy.
BERNARDO WEIS, [L. S.]
Consul of Bolivia.
ALEX. HARTLEY, [L. S.]
British Vice-Consul.
E. PONCIGNON, [L. S.]
Vice-Consular Agent of France.
FRA. K. GIBBONS.
WILLIAM CANNON.
JNO. BOURCHIER.
MNR. BUSTAMANTE Y BARREDA.

WALTER NICKOLSON.
FEODORO HARMSSEN.
THOS. PEAKE.
JAMES G. BEAUMONT.
ADOLFO WESTPHALEN.
A. CAMBIAGGO.
CARLOS ACKERMANN.
P. GOMEZ CORNESS.
TEDEO W. SCHERWOOD.
BDO. NYCANDER.
PATRICK GIBSON.
H. MEIER.
PAULSON HNS.
JAMES GOLDING.
ALEXANDER CLARK.
ROBERTO KELLER.
H. P. STANFIELD.
JUAN GUILLARD.
JORGE BUCLEIU.
GUILLERMO CHEBANAIK.
M. LINARES CUNNING.
MIGUEL V. VARGAS.
P. M. PARODI.
H. SAENZ.

That no charge was ever formulated against MacCord is evidence that no sufficient ground existed for preferring one, and such position is emphasized by the fact that none ever was made, while the record in the case is demonstration itself that none in truth could be made.

That the arrest was unlawful and oppressive because no charge was made, and consequently his imprisonment was in violation of the law of Peru, which declares "that prisons are only places of detention, and that no one shall be so detained for a longer period than twenty-four hours without being handed over to a judge for trial."

That MacCord's confinement and maltreatment were not only in violation of the local law of Peru, but the larger principles of international law, and, in a still higher sense, the incontrovertible guarantees

of a treaty at the time existing between the United States and Peru, as found in article 16, which reads:

The high contracting parties promise and engage to give full perfect protection to the persons and property of the citizens of each other, of all classes and occupations, who may be dwelling or transient in the territories subject to their respective jurisdiction; they shall have free and open access to the tribunals of justice for their judicial recourse, on the same terms as are usual and customary with the natives or citizens of the country in which they may be, and they shall be at liberty to employ, in all cases, the advocates, attorneys, notaries, or agents, of whatever description, whom they may think proper. The said citizens shall not be liable to imprisonment without formal commitment under a warrant signed by a legal authority, except in cases *flagrantis delicti*; and they shall in all cases be brought before a magistrate or other legal authority for examination within twenty-four hours after arrest, and if not so examined the accused shall forthwith be discharged from custody. Said citizens, when detained in prison, shall be treated during their imprisonment with humanity, and no unnecessary severity shall be exercised toward them.

That at the time of the arrest and imprisonment of Mr. MacCord in June, 1885, there were two distinct Governments in existence in Peru—one in the north of Peru, with President Iglesias at its head at Lima; the other in the south of the Republic, with General Cáceres at the head of his proclaimed constitutional Government at Arequipa. That by the act which General Cáceres and Iglesias signed December 2, 1885, both Governments were, by their mutual consent, merged into the Provisional Government thereby established, of which the present Government, by popular and peaceable determination, made under the authority and administration of said Provisional Government, became the successor, so that whatever may have been the character of either the Iglesias or the Cáceres Government, by consent of each and of the people of Peru, given through the subsequent elections, the then constitutional Government became the successor of both, and hence was responsible under the circumstances of the case for the acts committed by the officials, or under the authority of either, so far as they affected the rights, interests, or liberty of Mr. MacCord, a citizen of the United States, and especially so inasmuch as on the 3d of June, 1886, in pursuance of the compact between General Cáceres and Iglesias, in December, 1885, hereinbefore referred to, General Cáceres, to whose Government Colonel San Roman had pertained in his occupancy of Arequipa, was installed as the constitutional President of the Republic, which was done after due ascertainment of the popular will, and by the proclamation of the Peruvian Congress assembled, as stated by the Provisional Government, in fulfillment of the arrangement of December, 1885, made between General Cáceres and Iglesias.

That the prefect, Colonel San Roman, by whose orders, under General Cáceres, Mr. MacCord was subjected to the inhuman treatment complained of on the 8th day of December, 1886, solicited from the Peruvian Government at Lima the approval of his proceedings in the matter, whereupon that Government, without a hearing or even giving notice that the question was being investigated or considered, proceeded, under date of December 15, 1886, to approve the actions of the prefect in the matter, and of which Mr. MacCord was informed by official note dated December 22 of the same month, all of which was conveyed to Minister Alzamora by Minister Buck in his note of November 14, 1888, to the foreign office by way of correcting an error contained in the note of August 28, 1888, addressed to Minister Buck by Minister Alzamora stating that his "Government had never had knowledge of the facts referred to in said protest," referring to the protest of Mr. MacCord inclosed to Mr. Alzamora by Mr. Buck under date of August 6, 1888, and by direction of the State Department "requesting an expla-

nation in the case of Mr. Victor H. MacCord, now United States consular agent for Mollendo," to which Mr. Alzamora never made reply.

That although the foreign office of Peru entered upon the discussion of the subject under date of August 28, 1888, in reply to Mr. Buck's of August 6, 1888, declaring that "no matter what the realities or facts to which Mr. McCord refers, the responsibility, if such should exist, does not therefore rest upon the Government of the nation, but personally on the authors of them, inasmuch as the acts complained of were in fact the acts of a chief in arms against the Government, then recognized as legitimate by all nations, especially the Great Republic," Mr. Alzamora did, in his note of September 6, 1888, to Mr. Buck, replying to his of the 3d idem, expressly abandon his Government's first contention that it was not responsible for acts during the revolution referred to, and expressly assumed them, which position was treated by Mr. Buck in his note—in his note to Mr. Alzamora under date of September 14, 1888, as abandoned by the foreign office, such note to Mr. Alzamora closing the discussion, no reply being made to that of Mr. Buck by Mr. Alzamora.

If a nation or its ruler approves and ratifies the act committed by a citizen it makes that act its own. The offense must then be attributed to the nation as the true author of the injury, of which the citizen is perhaps only the instrument. (Hallech, *Int. Law*, p. 275; Vattel, liv. 2, ch. 6, §§ 74-77.)

That the impropriety of treating as material or attaching any importance to the personal letter of Mr. MacCord to Mr. Hicks, dated January 14, 1892, is apparent from the fact that the Government having taken up his claim he had no control over it, and especially so, as the subject and questions under consideration involved not only the rights of an American citizen who was brutally treated in a foreign country, but in a double sense, the national honor, in that MacCord was not only a citizen of the United States, but was one of its consular agents in Peru. It grew out of a private correspondence with Mr. Hicks, officiously opened by him while absent from his legation, and at Mollendo, in September, 1891, and into which Mr. MacCord was seemingly betrayed. Such letter, as well as each of the others addressed by Mr. MacCord to Mr. Hicks, corrected the garbled, erroneous, and inaccurate statements contained in the letters of Mr. Hicks, and successfully combated his conclusions, each of Mr. MacCord's teeming with expressions of dignified criticism, of disappointment, and regret at the indifference manifested by his Government's inaction for years, while the unofficial character of the letter of January 14, 1892, is made clear by the fact that its contents were never made known to the Peruvian Government or the foreign office, and was fully explained by his letter to Secretary Gresham in October, 1893, virtually withdrawing the one of January 14, 1892.

That nothing is found in the action of the Government of Peru since the inhuman treatment of Mr. MacCord in June, 1885, to in any way atone for the inhumanity charged and never denied. The Government authorities in control of the railways afterwards directed General San Roman to remove Mr. MacCord from the superintendency of the same, which he enjoyed at a salary of \$10,000 per annum. He was again, in the summer of 1888, made the victim of Peruvian persecution by the authorities at Arequipa, confined and imprisoned in his own office for five days, so confined for twenty-seven hours without food or water, for the avowed purpose of compelling him to pay the sum of \$3,000 for taxes levied on the railway company by the Government authorities, although Mr. MacCord was neither stockholder nor director in said railway company, his connection with it having ceased some time before.

On the 20th of September, 1888, the house of Mr. John Thorndike, the president of the railways of American construction, in which was established the United States consular agency, was taken possession of by armed soldiers, the consulate closed, the shield taken down, and the business of the consular agent suspended for weeks, which incline the committee to the opinion that the Peruvian authorities were emboldened by the unchallenged act of its maltreatment of Mr. MacCord in June, 1885, to the commission of this offense in 1888.

Your committee are of the opinion that, upon the facts and circumstances of this case as disclosed by the official correspondence, the United States should continue its investigation and efforts in this matter to the end that such an adjustment of the same may be made as may be warranted by the facts in the case and by the law thereto applicable. They, therefore, submit the accompanying resolution:

Be it resolved, That the President is hereby requested to continue the investigation and efforts heretofore made by the United States in the matter of the claim of Victor Hugo MacCord, a citizen of the United States, against the Government of Peru, to the end that such an adjustment of said claim may be made as may be warranted by the facts in the case and by the law applicable thereto.

